TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 232

~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN PROPERTY CUSTODIAN,
APPELLANT,

vs.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS,
ET AL., ETC.

No. 233

RICHARD MAYER, APPELLANT,

vs.

~~THOMAS W. MILLER~~ Howard Sutherland, ALIEN PROPERTY CUSTODIAN;
EDWIN REIS, KARL B. STRAUSS, ET AL., ETC.

No. 234

EDWIN REIS, KARL B. STRAUSS, AND ANNY REIS, ETC.,
APPELLANTS,

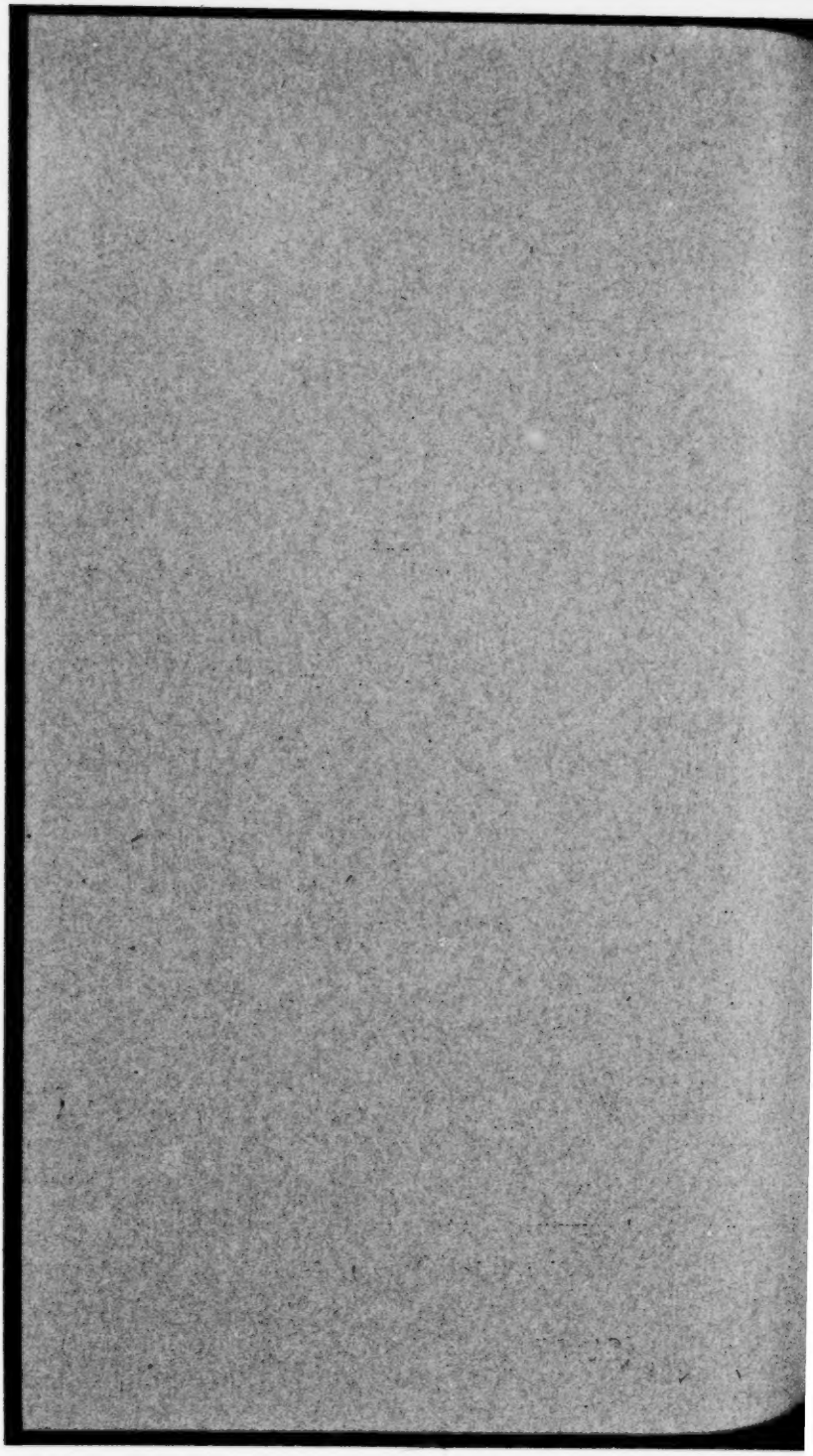
vs.

RICHARD MAYER AND ~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN
PROPERTY CUSTODIAN

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT

FILED DECEMBER 29, 1924

(30,771, 30,772, 30,773)



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[fol. 1] [Captions omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 1758, Equity Docket

THOMAS W. MILLER, Alien Property Custodian, Plaintiff,

v.

RICHARD MAYER et al., Defendants

BILL OF COMPLAINT—Filed September 1, 1922

Thomas W. Miller, as Alien Property Custodian, an officer of the United States, commorant at Washington in the District of Columbia, plaintiff, brings this bill of complaint against Richard Mayer, a naturalized citizen and inhabitant of the United States, and resident in the City of Boston in the County of Suffolk and Commonwealth and District of Massachusetts, Richard Mayer Company, a corporation duly organized under the laws of the Commonwealth [fol. 2] of Massachusetts, and a citizen thereof, and having its usual place of business in Boston in said Commonwealth and District, Anglo American Cotton Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts and a citizen thereof, and having its usual place of business in Boston in said Commonwealth and District, Edwin Reis, a citizen and inhabitant of Heidelberg in the State of Baden, Germany, Karl B. Strauss, a citizen and inhabitant of said Heidelberg, estate of Ludwig Reis, late of Mannheim in said Baden, Anny Reis, a citizen and inhabitant of said Mannheim, individually and as trustee for Anneliese Reis and Ruth F. Reis, both her two minor children, of said Mannheim, defendants.

As ground for relief in equity the plaintiff says:

1. The plaintiff, Thomas W. Miller, is Alien Property Custodian at Washington in the District of Columbia and brings this suit in his official capacity as such. He was appointed to that office by the President of the United States pursuant to the Act of Congress approved October 6, 1917, as amended, known as the "Trading with the Enemy Act," and is the successor in that office to Francis P. Garvan, who was appointed to that office by the President of the United States as successor to A. Mitchell Palmer, who was appointed to that office by the President of the United States in October, 1917, and who resigned in 1919. As such Alien Property Custodian the plaintiff is entitled to the possession and custody of all property which, after investigation, he or either of his predecessors in said office, or the President of the United States, have determined to belong to or to be held for, by, on account of, on behalf of or for

the benefit of an enemy or ally of an enemy, as defined by said act, except such property as may have been released or disposed of, pursuant to law or in obedience to the decree or judgment of a properly constituted court of the United States.

2. The defendant, Richard Mayer, is a resident of Boston in the District of Massachusetts. On or about May 24, 1913, he became a member of the partnership of Reis & Company, by virtue of an agreement of co-partnership executed by the respective partners at [fol. 3] Friedrichsfeld, Baden, Germany. The seat or headquarters of said partnership of Reis & Company was established at said Friedrichsfeld, and the principal books of account of said partnership were there kept under the supervision of the partners, there resident. A copy of a translation of said agreement is hereto annexed and marked "Exhibit A" and made a part hereof. Said defendant was a member of said co-partnership at the outbreak of war between the United States and the Imperial German Government on April 6, 1917.

3. The defendants, Edwin Reis and Karl B. Strauss, together with said Ludwig Reis during his life time, as general or "personally liable" partners, and defendant Anny Reis, individually and as trustee for her minor children, as a special partner, were the other members of said co-partnership.

4. The defendant, Richard Mayer Company, was organized as a corporation under the laws of the District of Massachusetts in the year 1914. Its entire capital was paid in by the partnership of Reis & Company, and said corporation was an agency or instrumentality of said partnership for the conduct of the business of said partnership. All the capital stock and assets of said corporation are equitably the property of said partnership of Reis & Company.

5. The defendant, Anglo American Cotton Company, was organized as a corporation under the laws of the District of Massachusetts in the year 1915. Its entire capital was paid in by the partnership of Reis & Company, and said corporation was an agency or instrumentality of said partnership for the conduct of the business of said partnership. All the capital stock and assets of said corporation are equitably the property of said partnership of Reis & Company.

6. The plaintiff is informed and believes that the post office addresses of said Edwin Reis and Karl B. Strauss, said Estate of Ludwig Reis and said Anny Reis, are "care of Reis & Company, Friedrichsfeld, Baden, Germany."

7. On or about May 28, 1918, and on or about September 20, 1918, A. Mitchell Palmer, Alien Property Custodian of the United [fol. 4] States duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, determined after investigation that said co-partnership of Reis & Company was an enemy within the meaning of said act, not holding a license granted by the

President, and said custodian thereupon required to be conveyed to him all the money and property held for, on account of, on behalf of or for the benefit of said enemy partnership by the defendants Richard Mayer, Anglo-American Cotton Company and Richard Mayer Company. Said custodian also determined after investigation that certain property or securities deposited by defendant Richard Mayer with Messrs. Lee, Higginson & Company, bankers, and with the First National Bank of Boston, Massachusetts, belonged to, or were held for, by, on account of, on behalf of or for the benefit of said co-partnership of Reis & Company, and said custodian required that said property and securities be conveyed, transferred and delivered to him to be held, administered and accounted for as provided by law. Copies of the determinations and requirements by said custodian are attached hereto and marked "Exhibit B," and made part of this bill of complaint.

8. All of the property so required to be conveyed to the Alien Property Custodian was in fact the property of, or was held by, for, on account of, or for the benefit of said co-partnership of Reis & Company.

9. All of the members of said co-partnership except the defendant Richard Mayer were enemies within the meaning of the Trading with the Enemy Act.

10. On or about the seventh day of April 1919, the defendant Richard Mayer brought a suit in equity in this court against Francis P. Garvan, as Alien Property Custodian, John Burke, Treasurer of the United States, and others, seeking to establish a right, title or interest in the property required to be conveyed to said Alien Property Custodian, or a debt or obligation against the enemy or enemies owning said property. Said suit was brought under the authority of Section 9 of the Trading with the Enemy Act as amended, and [fol. 5] was numbered 925 on the equity docket of this court.

11. On or about the fourth day of May, 1922, a final decree was entered by this court, after a mandate from the Circuit Court of Appeals for the First Circuit in said suit brought by Richard Mayer, whereby it was ordered, adjudged and decreed—inter alia—as follows:

"3. That the said partnership of Reis & Company was dissolved by operation of law upon the outbreak of war between the United States and the Imperial German Government on April 6, 1917.

4. That according to German law, a partnership of this character would not be dissolved by such outbreak of war.

5. That the plaintiff, Richard Mayer, is neither an enemy -or ally of enemy but the said Edwin Reis and Karl B. Strauss are enemies within the purview and meaning of the Trading with the Enemy Act, the amendments thereto and the executive orders and proclamations issued thereunder.

7. That the interest of the plaintiff in the said partnership was 20 per cent of the profits and losses thereof in addition to the capital contributed by him and the interest thereon.

9. That upon the present state of the evidence, this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property, and there being no evidence of the liabilities of the firm.

10. That the complaint on the dissolution of the partnership by the outbreak of the war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting.

11. That the plaintiff is entitled to the immediate re-possession [fol. 6] of all property so seized and the proceeds arising therefrom. That the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of Section 8 (a) of the Trading with the Enemy Act, and with the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

12. Until the entry of said final decree the plaintiff and his predecessors in the office of Alien Property Custodian, and the Treasurer of the United States, held the money and property required to be conveyed to said A. Mitchell Palmer as Alien Property Custodian and administered the same in strict accordance with law, and under the provisions of the Trading with the Enemy Act and the amendments thereto and the proclamations and orders lawfully made by the President of the United States.

13. Since the entry of said final decree, the plaintiff has fully complied with the orders of this court in respect to said property, and has turned over and delivered to the defendant, Richard Mayer, all the property in his possession as the property of the said partnership of Reis & Company, and the Treasurer of the United States has turned over to the said defendant all the moneys in his possession belonging to said partnership of Reis & Company.

14. After the outbreak of the war between the United States and Germany, the partnership not having been dissolved, under German law, by that event, as appears from paragraph 3 of the decree set forth in paragraph 11 above, the partners resident in Germany continued to conduct the business and affairs of the partnership which were subject to their discretion and control in exactly the same manner as before the declaration of war, duly crediting the defendant, Richard Mayer, his share of the proceeds of the business and charging him with expenditures made upon his account or at his order, and causing the books of the said partnership to show at all times the interest of defendant Richard Mayer in the assets of the partnership in the possession of, or subject to the control of, the partners resident in Germany.

[fol. 7] 15. By reason of events over which the partners resident in Germany had no control and for which they have no responsibility, it has been hitherto impossible to have any accounting as to the respective interests of the partners, including the defendant Richard Mayer, in the assets of the partnership, either as to the assets in Europe or as to those within the possession and subject to the control of the defendant Richard Mayer.

16. The value of the assets of the partnership has been greatly diminished by reason of certain taxes levied upon them and collected by the Imperial German Government and by the Duchy of Baden on account of profits growing out of the existence of the war between the Imperial German Government and other powers.

17. The value of the assets situated without the United States has greatly depreciated since the dissolution of the partnership and pending the accounting now prayed for, but said depreciation has been due to no default or neglect on the part of any of the partners resident in Germany.

18. The amount due defendant Richard Mayer upon the accounting now prayed for has been greatly diminished by reason of certain payments made by the partners resident in Germany to certain relatives of said defendant Richard Mayer, enemies of the United States within the meaning of the Trading with the Enemy Act, such payments having been made at the order of the defendant, Richard Mayer.

19. The plaintiff is informed and believes that the defendant, Richard Mayer, has wrongfully and without authority attempted to convert a large amount of the assets of the said partnership to his own use and has made certain unauthorized, improper and unlawful expenditures of the funds of the partnership committed to his charge, whereby said assets and funds have been wasted and lost and said defendant Mayer has thereby become indebted to said partnership in the amount of said losses and for interest upon the sums wrongfully converted to his own use.
The plaintiff is informed and believes

20. That, as a result of the matters set forth in paragraph 19 hereof, the amount which otherwise would be due to said Mayer, [fol. 8] upon an accounting of the partnership affairs, has been largely diminished.

21. The defendant, Richard Mayer, is under a duty properly to account for all the assets of the partnership of Reis & Company which have come into his hands and possession, or for which he is by reason of the foregoing responsible.

22. The plaintiff, as Alien Property Custodian, is entitled, as against said Richard Mayer to the re-possession of such of the assets of Reis & Company as may have been within the terms of the demands herein before set forth and may have come into the hands

or possession of said Mayer or for which said Mayer may be responsible.

23. The plaintiff is informed and believes that a proper accounting of the affairs of said partnership will show that the assets of the partnership now in possession or control of said Mayer, or for which he may be found to be responsible, are greatly in excess of the amount properly to be allowed to said defendant Mayer upon such accounting.

24. The plaintiff is informed and believes that the present value of the assets of the partnership of Reis & Company, other than those in the United States, and including defendant Mayer's capital contribution of 200,000 marks does not exceed the amount of 11,489,168.41 marks and that the proportion thereof belonging to the defendant Mayer, and without any deduction by reason of any dealings or neglect on the part of said Mayer with respect to the assets which have been under his control and possession, does not exceed 1,836,386.80 marks.

25. The plaintiff is informed and believes that the value of the property required to be conveyed to the Alien Property Custodian as belonging to or held for the benefit of said partnership was approximately $910,000 and that the interest of defendant Mayer therein cannot exceed the value of $180,000 and in fact, by reason of the matters hereinabove set forth in paragraph 19, is very much less than that amount.

Wherefore the plaintiff prays

First. That the defendant Richard Mayer be ordered to disclose [fol. 9] the present value in cash of the assets of the partnership of Reis & Company within his possession or subject to his control.

Second. The defendants, partners resident in Germany, other than the special partner, be ordered to disclose the present cash value of the assets of said partnership within their possession or subject to their control.

Third That in the accounting to be ordered and decreed hereunder, the defendant Richard Mayer be ordered to charge himself with all losses of partnership assets occasioned by his diversion and conversion thereof to his own use, and his unauthorized investment thereof in stock or other securities, and with interest upon the amounts so lost and with all gains and accretions of income upon investments made by him with the money or property of said partnership, or taken by him from the assets of the partnership and by him treated as his own in advance of any partnership accounting.

Fourth. That the amount due the defendant Mayer from the partnership of Reis & Company be determined and established as of the date of the final decree hereunder, and that the defendants Richard Mayer, Richard Mayer Company and Anglo-Ameri-

can Cotton Company be thereupon ordered to pay over, transfer and deliver to the plaintiff the surplus which shall remain out of the assets of said partnership after the satisfaction of the amount due said defendant Mayer, if any upon a true and proper accounting.

Fifth. That in determining the amount due him from the partnership on accounting the defendant Richard Mayer be credited with the value of his interest in the European assets of said partnership.

Sixth. That process issue to all the parties named as defendants in the bill of complaint, that they answer the bill of complaint not under oath, answer under oath being hereby expressly waived, and that they be bound by the decree entered in this cause.

Seventh. That the plaintiff have such other and further relief [fol. 10] by reason of the matters set forth in the bill of complaint and such decrees and processes as this court deems proper.

Thomas W. Miller, Alien Property Custodian, by His Solicitors, Elias Field, Dean Hill Stanley, Special Assistants to the Attorney General.

Exhibit A to Bill of Complaint

Under the Firm name of Reis & Company with the main seat at Friedrichsfeld, branch at Heidelberg, there exists a partnership.

The object of same is the dealing in Cotton Waste, the manufacture of Wiping Waste and other relating articles.

Personally liable partners are Messrs. Edwin Reis, Heildelberg, Ludwig Reis, Heidelberg, Karl Bachert Strauss, Manchester. A special partner is Mrs. Wilhelm Reis, Widowed, Heidelberg, Mr. Richard Mayer of Boston, America enters the partnership per July 1st, 1913 as an additional personal liable partner.

For the specific (definite) regulation of their mutual relations the interested parties conclude the following

Partnership Agreement

Where in the following text mention is made of partners, only such partners are meant which are personally liable unless the special partner is expressly mentioned.

Paragraph 1

Each member devotes his full working power to the business. Mr. Richard Mayer takes his domicile in Boston. He is to conduct the American business of the partnership. He is upon request of the other partners to conduct individual or entire transactions for the account of the partnership either under his present own firm name, Richard Mayer, or under any other firm's name

that may be acquired for the Company. Upon decision of the partners his present firm, Richard Mayer, is to be dissolved.

Mr. Karl Bachert Strauss obligates himself as soon as conditions permit and not later than July 1st, 1914 to make his main- [fol. 11] stay at Heidelberg. But even before, according to the requirements of the business, will he alternately make his stay at Manchester and Heidelberg.

Paragraph 2

Each partner signs the partnership alone and represents same for external purposes. No partner is justified, without consent of the others, to become interested in any other enterprise excepting through capital investment. Any kind of participation, however, is inadmissable if that other enterprise serves the same purpose as the business of the firm of Reis & Company.

Paragraph 3

No partner is entitled, without the consent of the others, to take on any obligation of any third party in any form whatever, such as bonds, mortgages, guaranties, notes, endorsements, etc., be it either for the firm's or his own account.

Paragraph 4

No partner is allowed to undertake any transactions at a Bourse (stock exchange) be it in stocks, bonds or other commercial commodities either in the name of the Company or in his own name. A partner who violates this decision has to pay a penalty of Marks 5,000 to the other partners. If the transactions have resulted in a gain, then this penalty increases itself automatically to the amount of these gains. The other partners have also the right to claim restitution of any loss sustained that exceeds the amount of the penalty.

Paragraph 5

In case a member is opposed to a transaction belonging to the regular course of business, then the majority decides whether or not that transaction should be carried out. Each partner is required before he undertakes a transaction which does not belong to the regular course of business, to call for unanimous consent of the other partners. To be considered as such transactions are the purchase and sale of Real Estate, the taking on of mortgages, making loans to anyone, the erection of new buildings, the participation in other commerical enterprises other than through the acquisition of shares, the acquisition of any other business enterprise, the giv- [fol. 12] ing full power of attorney to anyone. If a member violates these obligations, then he can be called upon by the other partners to take over and carry out such transactions for his own account.

Paragraph 6

Mrs. Wilhelm Reis, widowed, has claim only to the interest on her investment at the rate of 4½%. She does not participate in gain or loss. Nevertheless, she is allowed to have her name continued to be used as special partner. She can, at any time, call for the cancellation of this agreement and ask for a transfer of her investment to creditor's account and have it treated as such.

Paragraph 7

As a basis for the property invested by Messrs. Edwin Reis, Ludwig Reis and Karl Bachert Strauss, the inventory of November, 1912 is binding. The share of Mr. Edwin Reis, according to that, amounts to Marks 1,179,845.03, Mr. Ludwig Reis, Marks 1,136,867.26, Karl Bachert Strauss, Marks 348,313.24. Messrs. Edwin Reis, Ludwig Reis and Karl Bachert Strauss guarantee to Mr. Richard Mayer the correctness of this inventory. They also guarantee the Accounts Receivable contained in that inventory within 1%.

Mr. Richard Mayer brings into the partnership his firm and business which he has conducted in Boston, with all its assets and liabilities. Binding is his inventory to be taken per July 1, 1913. In this inventory all merchandise is to be taken on at cost value and the Accounts Receivable at their actual values. Mr. Richard Mayer guarantees the correctness of this inventory. He also guarantees the Accounts Receivable within 1%. The other partners have a right to check up the inventory. In case the inventory does not reach the amount of Marks 200,000 then Mr. Richard Mayer has to make good the difference to bring it up to that minimum. In case Mr. Karl Bachert Strauss and Richard Mayer come into possession of larger amounts of money, be it either through inheritance, marriage or similar events, they are then obligated to invest this money in the partnership until their investment equals the smallest amount of the Messrs. Reis.

[fol. 13]

Paragraph 8

The fiscal year of the partnership runs from December 1st to November 30th. At the end of the year, inventory is to be taken every year. This does not require the consent of the special partner. In the inventory all merchandise on hand must be taken in at cost and in case the market value is lower than the cost, then market value is to govern. Manufactured articles are to be taken in at cost of production. Real Estate and Buildings must be written off 5% and the machinery 10%.

Paragraph 9

The investment capital of each partner, without consideration of the yearly result (gain or loss), bears interest at 4½ per cent.

The partners receive, without consideration of the yearly result, a fixed compensation (salary) namely: Mr. Edwin Reis 22,000 Marks, Mr. Ludwig Reis 22 000 Marks, Mr. Karl Bachert Strauss 20,000 Marks and Mr. Richard Mayer 16,000 Marks. Each partner, during the course of the year, is entitled to draw up to an amount equal to his compensation and the interest due him, combined.

Paragraph 10

The participation in gain and loss is as follows: Mr. Edwin Reis 27½%, Mr. Ludwig Reis 27½%, Mr. Karl Bachert Strauss 25% and Mr. Richard Mayer 20%. For the year December 1st, 1912 to November 30th, 1913, Mr. Richard Mayer participates to the extent of 6/12ths of his share at 20%. Shares of profit, as well as any amount not fully drawn for compensation (salary) and interest are to be credited to the capital (investment) account of the respective partner. The time of duration of the partnership is firmly fixed from July 1st, 1913, to November 30th, 1916. If there is no written notice given six months before expiration and if the partnership continues to exist, then an additional duration of two to two years, with the same arrangement about giving notice, still remains in force. The giving of notice is to be directed against the partnership. A copy of such notice is to be sent to the other partners. The timely arrival of the notice at the seat of the Company is suf- [fol. 14] ficient. In case of such notice taking place, the partnership is to be dissolved. In the absence of a further understanding or agreement, liquidation takes place. The partners are liquidators. Each one represents the firm in liquidation.

Paragraph 11

Giving notice on the part of the special partner does not dissolve the partnership. It only results in the justified demand by Mrs. Wilhelm Reis, widowed, for the payment of the money due her. This payment is to take place in two yearly installments, the first amount being due at the termination of the agreement.

Paragraph 12

In case dissolution of the partnership takes place within the first three years, from July 1st, 1913, in consequence of giving notice or for any other legal reason, then Mr. Richard Mayer is not entitled to any amount realized in the sale of the Real Estate, Buildings and Machinery which is in excess of the book values which were existing at the time of his entry into the partnership. New purchases and improvements must be taken into consideration.

Paragraph 13

In case a partner dies, then the surviving partners continue the partnership. The heirs of the deceased are eliminated with the

day of death. They have claim only to the payment of the capital invested by the deceased on the basis of the last inventory taken prior to the time of death. To this payment is to be added 4½% from beginning of last fiscal year to the day of death, also corresponding share of salary. The drawings of that period are to be deducted. The heirs do not participate in loss or gain which take place during the year of the death. This also takes place if the surviving partners decide to dissolve the partnership in consequence of the deceased's death. The above stipulated amount due to the deceased is to be paid to the heirs as follows: 20% within sixty days of the day of death, the remainder within the following two years in three equal installments, the first one to take place within eight months after the payment of the first 20% due. The money so due is to bear interest at 5%, which interest is to be added and [fol. 15] paid whenever a part payment comes due. The heirs of the deceased partner are not responsible to the other partners for the collection of Accounts Receivable which are contained in that particular inventory which concerns the heirs. Each heir of the deceased partner can demand the immediate payment of his balance due, if the partnership, after having failed to make payment when due, does not make settlement within one — after specific demand for the money has been made.

Paragraph 14

The death of the special partner has no influence upon the existence of the partnership. Her rights are absorbed by her heirs.

Paragraph 15

In so far as this agreement does not contain any specific conditions, then the provisions of the German Commercial and Civil Court laws are determining. As a specific seat of Law Court for the settlement of any differences Mannheim is agreed upon by all concerned.

Friedrichsfeld, May 24, 1913.

Edwin Reis, Karl Bachert Strauss, Ludwig Reis, Richard Mayer.

The correctness of the above copy with the original that was presented and handed back is hereby certified to.

Heidelberg, February 11th, 1919.

Grand Ducal Notary's Office II.

Becker. (Seal Grand Ducal Notary, Herman Becker.)

Seen for legalization of the above seal and signature of the Notary Becker of the Gr. Bad. Notariat II. at Heidelberg.

Francfort on the Main on the 21st day of February, 1919.

J. U. Sepere, Royal Spanish Consul. (Seal.)

Charged ad Interim with the protection of American interests. Consulado de Espana Francfort del Main No. 16. No fee.

[fol. 16] EXHIBIT B TO BILL OF COMPLAINT

APC Form No. 106-B. Report No. 21704

Short Demand for Money and Property. Trust No. W-19975-M. Original Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made by the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrmuent or instruments as may be necessary or proper to evidence upon the records or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidence of indebtedness or obligation, of any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' [fol. 17] and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the enemy or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

To Anglo-American Cotton Company, (address) 200 Summer Street, Boston, Massachusetts:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive [fol. 18] orders, after investigation do determine that Reis & Company (name of enemy) whose address is Heidelberg, Germany (last known address), is an (enemy) (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money and property mentioned and particularly described in your report to the Alien Property Custodian, dated May 21st, 1918, as owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends and/or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law.

The State Street Trust Company is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 28th day of May, 1918.
A Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director.

Service of the within demand accepted this 7th day of June, 1918.
Anglo-American Cotton Company. J. Laible, Treasurer.

Served the within notice and demand on the within-named Anglo-American Cotton Company, at 200 Summer Street, in the city of Boston, State of Massachusetts, this 7th day of June, 1918, by giving [fol. 19] correct copy thereof (In the case of an individual) (In the case of a partnership) (In the case of a corporation) to Julius Laible, a Treasurer of the corporation of whom said demand is made, at the office of said corporation.
State Street Trust Co. as Depositary for Alien Property Custodian.
D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust W-19975-M.

APC Form No. 106-B. Report No. 21705

Short Demand for Money and Property. Trust No. W-19975-M.
Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (e). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of [fol. 20] enemy, deliver up any notes, bonds, or other evidences of

indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

[fol. 21] To Richard Mayer Company, (address) 200 Summer St., Boston, Massachusetts:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive orders, after investigation to determine that Reis & Company (name of enemy), whose address is Heidelberg, Germany (last known address), is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money and property mentioned and particularly described in your report to the Alien Property Custodian, dated May 21st, 1918, as owing or belonging to, or held for, by, on account of, or on behalf of, or for

the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends and/or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered and accounted for as provided by law.

The State Street Trust Company is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 28th day of Maay, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director.

[fol. 22] Service of the within demand accepted this seventh day of June, 1918.

Richard Mayer Company, by Richard Mayer, Treasurer.

Served the within notice and demand on the within named Richard Mayer Company, at 200 Summer Street, in the city of Boston, State of Massachusetts, this 7th day of June, 1918, by giving a true and correct copy thereof (In the case of an individual) (In the case of a partnership) (In the case of a corporation) to Richard Mayer, a Treasurer of the corporation of whom said demand is made, at the office of said corporation.

State Street Trust Co. as Depositary for Alien Property Custodian.
D. M. Dutch.

(Strike out the inapplicable clauses.) Trust No. 19975.

A. P. C. Form No. 106. Report No. 21703

Trust No. F-19975-CB. Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the Presi- [fol. 23] dent may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy, or ally of enemy, creditor, or obligee."

To Mr. Richard Mayer, (address) 200 Summer Street, Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property to wit:

The sum of Two Thousand One Hundred Fifty-five Dollars and Sixty-one Cents ($2,155.61) with accrued interest to date of payment to the Alien Property Custodian.

Also £37 4s. 1d. on deposit with Smith, Coney & Barret, Liverpool, England;

Also the following bonds, stocks and securities:

$1,000.00	City of Cambridge Coupons, 4½s, 1921		#17031
9,000.00	do.	do. 1922	17032/40
5,000.00	do.	do. 1923	17041/45
5,000.00	do.	do. 1924	17051/55
5,000.00	do.	do. 1926	1755/60
5,000.00	do.	do. 1927	17145
			17147/50
15,000.00	State of Mass. Coupons, 3½s, 1948.....		685/93
		.....	698
		.....	704/08
10,000.00	Chicopee Coupons, 4½s, 1930.....		301/310
25,000.00	Federal Land Bank, 4½s, 1937.....		1251/75
[fol. 24]			
3,000.00	Atlantic & Charlotte 5's, 1944.....		#M 11333/35

10,000.00	Cons. Gas El. Lt. & Power Co. 4½s, 1935	13533/42
19,000.00	Great Western Power Co. 5's, 1946....	#5009
	....	5645/46
	....	6337
	....	15202
	....	15202
	....	18147
	....	18160
	....	18164
	....	12683
	....	19399
3,000.00	Atlantic & Charlotte 5's, 1944.....	#M 11333/35
7,000.00	St. Louis & San Francisco 5's 1950....	
1,000.00	General Electric Co. 6's, 1920.....	1814
112,000.00	Liberty Loan 3½'s, 1947.....	12/1000
	.....	#845639/50
	.....	100/1000
	.....	845501/50
	.....	845551/600
50,000.00	do. (2nd of 1917) 4's.....	50/1000
	.....	#607843/92

50,000.00 par value Canadian Gasoline Corp. Ltd. (50,000 shares) present value unknown.

15,000.00 par value Canadian Gasoline Corp. Ltd. (15,000 shares) present value unknown.

5,000.00 par value (1,000 shares) common stock Gasoline Corp. present value unknown.

5,000.00 par value 7% preferred stock Simmons Company present value unknown.

5,000.00 par value (1,000 shares) common stock Gasoline Corp. present value unknown.

285,000.00 par value (285,000) shares Canadian Gasoline Corp. Ltd. present value unknown, supported by notes from Guy Murchie, original liability from Walter Whetstone to the amount of $30,000.00 which Mr. Murchie took up,

together with any dividends or interest heretofore or hereafter received by you on account of the above securities with interest on said dividends and coupon payments, if any, to date of settlement with the Alien Property Custodian.

[fol. 25] Also demand note for the sum of One Thousand Dollars ($1,000) on the Flexner-Taylor Co., Boston, Mass.;

Also note for Four Hundred Dollars ($400) on Mrs. Sarah H. Welch, due September 15, 1918;

Also note for One Hundred Twenty-five Dollars ($125) on Consolidated Construction Co., due June 15, 1918, Boston, Mass.,

Together with any payments *or* principal or interest on any of the aforesaid notes to date of settlement with the Alien Property Custodian.

J. L. Davis.

is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership. Address: Heidelburg, Germany, whom after investigation I do determine to be an (enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co., is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 27th day of September, 1918, under protest. Richard Mayer.

Served the within notice and demand on the within-named Richard Mayer at 200 Summer Street in the City of Boston, State of Mass., [fol. 26] this 27th day of September, 1918, by giving a true and correct copy thereof (in the case of an individual) to the person of whom said demand is made.

(In the case of a partnership.)

State Street Trust Co. as depositary for Alien Property Custodian.
D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust F-19975 CB.

A. P. C. Form No. 106. Report No. 21703

Trust No. F-19975-CB. Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or property to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property [fol. 27] custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

To Lee Higginson & Company—Address, Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit: the following property or securities deposited with you by Richard Mayer, 200 Summer Street, Boston, Massachusetts:

$1,000.00	City of Cambridge Coupons 4½s, 1921.....	#17031
9,000.00	do. do. 1922.....	17032/40
5,000.00	do. do. 1923.....	17041/45
5,000.00	do. do. 1924.....	17051/55
5,000.00	do. do. 1926.....	17056/60
5,000.00	do. do. 1927.....	#17145
		17147/50
15,000.00	State of Mass. Coupons, 3½s, 1948.....	685/93
		698
		704/08
10,000.00	Chicopee Coupons, 4½s, 1930.....	301/310
25,000.00	Federal Land Bank 4½s, 1937.....	1251/75
5,000.00	Public Service of No. Ill. 5's, 1956.....	12457/61
1,000.00	Cons. Gas El. L. & Power Co. 4½s, 1935.....	13533/42
1,000.00	Great Western Power Co. 5's 1946.....	#5009
		5645/46
		6337
		15202
		18147
		18160
		18164
		12683
		19399

3,000.00 Atlanta & Charlotte 5's, 1944, #M.....	11333/35
[fol. 28] 7,000.00 St. Louis & San Francisco 5's, 1950..	.....
1,000.00 Central Electric Co. 6's 1920.....	1814

Together with interest heretofore or hereafter received by you on any of the said securities and any interest accrued on said interest to date of settlement with the Alien Property Custodian is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership, (address:) Heidelburg, Germany, whom after investigation I do determine to be an (enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co. is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 23d day of September, 1918.

Lee, Higginson Co., by David Shaw, Partner.

Served the within notice and demand on the within-named Lee Higginson & Co., at 44 State Street in the City of Boston, State of Mass., this 23rd day of September, 1918, by giving a true and correct copy thereof (In the case of an individual.) (In the case of a part-
[fol. 29] nership.) to David Shaw, a member of the partnership of whom said demand is made, (In the case of a corporation) State Street Trust Co. as depositary for Alien Property Custodian.

D. M. Dutch (Secretary).

(Strike out the inapplicable clauses.) Trust No. F-19975 CB.

A. P. C. Form No. 106. Report No. 21073

Trust No. F-19975-CB. Original. Alien Property Custodian.

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7. (c) "If the President shall so require, any money or other property owing or belonging to or held for, by, on account

of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebted- [fol. 30] ness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

To the First National Bank (address) Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit:

The following property or securities, deposited with you or now deposited in Safe Deposit Box No. 3722 of your safe deposit vaults by Richard Mayer of 200 Summer Street, Boston, Mass.:

The Sum of Two Thousand One Hundred Fifty Five Dollars and Sixty one cents ($2,155.61), together with any interest thereon to date of payment to the Alien Property Custodian;

Liberty Bonds of the face value of One Hundred Sixty Two Thousand Dollars ($162,000);

Stocks

$50,000.00, par value, Canadian Gasoline Corp, Ltd. (50,000 shares), present value unknown.

15,000.00, par value, Canadian Gasoline Corp. Ltd. (15,000 shares), present value unknown.

5,000.00, par value (1,000 shares), common stock Gasoline Corp., present value unknown.

5,000.00, par value (1,000 shares), preferred stock Gasoline Corp., present value unknown.

5,000.00, par value, 7% preferred stock Simmons Company, present value unknown.

285,000.00, par value (285,000), shares Canadian Gasoline Corp., Ltd., present value unknown, supported by notes from Guy Murchie, original liability from Walter Whetstone to the amount of $30,000.00 which Mr. Murchie took up,

[fol. 31]

together with any interest or dividends heretofore or hereafter received by you on the above securities and any interest accrued on said interest or dividend payments to date of settlement with the Alien Property Custodian, is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership, (address) Heidelburg Germany, whom after investigation I do determine to be an enemy (ally of enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co. is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to Depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 23rd day of September, 1918.

The First National Bank of Boston, by F. A. Goodhue, V. Pt.

Served the within notice and demand on the within-named The First National Bank at 70 Federal Street in the City of Boston, State of Mass., this 23rd day of September, 1918, by giving a true and correct copy thereof (In the case of an individual.) (In case of a [fol. 32] partnership.) (In the case of a corporation.) to F. A. Goodhue, a Vice President of the corporation of whom said demand is made, at the office of said corporation.

State Street Trust Co. as depositary for Alien Property Custodian.

D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust No. F-19975-CB.

Trust No. 19975. Report No. 21705

Demand by Alien Property Custodian

To Richard Mayer Company, (address) 200 Summer Street, Boston, Mass.:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that those certain shares of your capital stock heretofore registered and standing upon your books in the name of the persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) Herman J. Galloway, on the margin thereof), and evidence or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given [fol. 33] in Column No. 5 on the same line therewith, are enemies and each of them is an enemy not holding a license granted by the President, within the purview of said acts as amended and said proclamations and executive orders issued in pursuance thereof.

[illegible] such Alien Property Custodian and by virtue of the authority vested in me, I do hereby seize said shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and I do hereby expressly ratify and confirm the issuing heretofore of certificates of stock in the name of the Alien Property Custodian, or otherwise as the Alien Property Custodian has heretofore requested and directed, which certificates of stock are now held by or for me.

You are required to note forthwith the substance of this demand upon your stock books or records, but until otherwise directed, you are not required to issue other or additional certificates representing said shares of stock. This demand is supplementary to any demands which may have been heretofore made upon you with respect to the said shares of certificates, and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

Witness my hand and seal of office this 12th day of May, 1919.
Francis P. Garvan, Alien Property Custodian. (Seal.)

O. K. H. J. G.

Approved: Brenton K. Fisk.

Exhibit A

Attached to demand issued by the Alien Property Custodian, dated the 12th day of May, 1919, and identified by the following signature.
(Signed) Herman J. Galloway.

1 Name of person in whose name shares of stock or other beneficial interests stand or stood	2 Certificate No.	3 Number and kind of shares		
		Common	1st preferred	2d preferred
Richard Mayer	7	1	.....	.....
Richard Mayer	9	495	.....	.....
[fol. 34] Richard Mayer	10	500	.....	.....
Richard Mayer	11	1,000	.....	.....
J. L. Flatau	12	1	.....	.....
Richard Mayer	13	1	.....	.....
Richard Mayer	16	1	.....	.....
Charles E. Hicks	18	1	.....	.....

4 Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held	5 Address	6 Name to whom new certificate to be issued
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....

Boston, May 17, 1919.

Service of the within demand is hereby accepted.
Richard Mayer Company, by James C. Howe, President.

Trust No. 19975. Report No. 21704

Demand by Alien Property Custodian

To Anglo-American Cotton Company, (address) 200 Summer Street, Boston, Massachusetts:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress

known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, said proclamation and executive orders, after investigation do determine that those certain shares of your [fol. 35] capital stock heretofore registered and standing upon your books in the name of the persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) Herman J. Galloway on the margin thereof), and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each of them is an enemy not holding a license granted by the President, within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, and by virtue of the authority vested in me, I do hereby seize said shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and I do hereby expressly ratify and confirm the issuing heretofore of certificates or stock in the name of the Alien Property Custodian, or otherwise as the Alien Property Custodian has heretofore requested and directed, which certificates of stock are now held by or for me.

You are required to note forthwith the substance of this demand upon your stock books or records, but until otherwise directed, you are not required to issue other or additional certificates representing said shares of stock. This demand is supplementary to any demands which may have been heretofore made upon you with respect to the said shares or certificates, and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

[fol. 36] Witness my hand and seal of office this 12th day of May, 1919.

Francis P. Garvan, Alien Property Custodian. (Seal.)

O. K. HJG.

Approved. Burton K. Fisk.

This cause was thence continued to the September Term, A. D. 1922, when, to wit, September 18, 1922, the following Answer of Richard Mayer et al. was filed:

In United States District Court

Answer of Richard Mayer et al.—Filed September 18, 1922

These defendants, for answer to the bill of complaint in the above-entitled case, say as follows:

[Memorandum.—The first paragraph was subsequently stricken out by order of the court upon motion of the plaintiff and does not bear on the errors assigned. James S. Allen, Clerk.]

Second. On or about June 15, 1922, said Richard Mayer made and said Alien Property Custodian received a full and true accounting in the premises and a copy thereof as so made and received is hereto annexed marked "A" and made a part hereof and there was and is no surplus to be paid or delivered to said Alien Property Custodian; and said Richard Mayer hereby affirms and repeats said accounting as a true and full accounting.

Third. For further answer to the several paragraphs of the bill of complaint, these defendants say that the allegations thereof, each and all of them, are immaterial, and also say as follows: 1. Admitted. 2 Admitted except that the partnership had also a principal seat and principal books of account at Boston. 3. Admitted. 4 and 5. Admitted except that said corporations were not agencies or instrumentalities as alleged and their capital stock and assets are not equitably the property of said partnership but are the property of Richard Mayer. 6. Admitted. 7. Admitted. 8. Denied. Said property was all property of Richard Mayer. 9. Admitted. 10. Ad-[fol. 37] mitted. 11. Admitted. Said quotations are a part only of said decree. 12. Admitted except that defendants deny that said administration was according to law and refer to the decision in said case. 13. Admitted for the purposes of this case only. 14. Denied as the contrary is res adjudicata as adjudged in said case. 15. Denied. 16. Denied. 17. Denied. 18. Denied. 19. Denied. 20. Denied. 21. Denied. 22. Denied. 23. Denied. 24. Denied. 25. Denied.

Wherefore these defendants say that the bill of complaint should be dismissed with costs to these defendants.

By Their Attorneys, Dunbar, Nutter & McClennen, Edward F. McClennen.

Exhibit A to Answer of Richard Mayer et al.

Accounting by Richard Mayer to the Alien Property Custodian

June 7, 1922.

To the Alien Property Custodian:

Pursuant to the decree of the District Court of the United States for the District of Massachusetts entered on February 1, 1921 in the

case of Richard Mayer v. Francis P. Garvan, Alien Property Custodian, et al., No. 925 in Equity, as affirmed with modifications by the decree of the Circuit Court of Appeals for the First Circuit on January 17, 1922, I, the said Richard Mayer, account as hereinafter set out.

In rendering this account I expressly rely and insist upon the instrument dated February 7, 1917 set out as Exhibit D of the substituted bill of complaint in the above described case and appearing on pages 23 and 24 of the printed record in the Circuit Court of Appeals, and the taking over of the European assets as their own by Edwin Reis, Ludwig Reis and Karl B. Strauss, as disentitling said former partners in the firm of Reis & Company, and the Alien Property Custodian claiming their interest to this or to any account of the American assets. I do not hereby or by anything heretofore or hereafter done, waive this, but on the contrary, expressly insist thereon.

[fol. 38] This partnership was dissolved by the outbreak of war on April 6, 1917. For convenience, I take for the accounting date instead of April 6, 1917, April 1, 1917. I know of no substantial change during the five days involved, and the accounts have been made up to April 1, 1917 in the books of the several parties.

On April 1, 1917 there were, as far as I know, no assets of the firm of Reis & Company, unless it be the following items:

1. The European assets,
2. The stock of the Richard Mayer Company,
3. The Richard Mayer Export Department so called,
4. The stock of the Anglo-American Cotton Company.

The best and most detailed information which I have concerning the European assets is in the report of Price, Waterhouse, Peat & Company, printed in the record in the Circuit Court of Appeals in the above described case at pages 113 to 153. From this it appears (p. 145) that the assets with their valuation in marks December 31, 1916, were as follows:

Land and Buildings	520,502.94
Plant and Machinery	328,013.55
Furniture and Fittings	339.02
Tools and Utensils	3,376.24
Merchandise	1,537,257.72
Debtors, less Reserve	2,145,961.50
Investments	5,004,028.32
Bills of Exchange	382.08
Cash and Bank Balances	5,742,309.18
	15,282,170.55

The actual value of these various assets and the sum for which they could have been liquidated had they been sold instead of being taken over as their own by Messrs. Reis, Reis and Strauss, I

haven't the means of giving. The books had been kept in marks. All transactions between us had always been based on the equivalent of 4.20 marks to the dollar. The accounts do not include anything for the very valuable good will of Reis & Company or for the salvage in the reserves which, as appears on page 146, were very [fol. 39] large. In this accounting I am certainly entitled to treat these assets as having the value at which they were stated on the books and at the rate of equivalents practiced between us.

It will be observed that no question of commerical rate of exchange is involved, and that these marks are not to be deemed to be paper marks as distinct from gold marks. It was not a question of remitting these assets to the United States in dollars. It was a question of determining inter-former-partners as to their value.

My interest according to this report (p. 138) in the European assets on April 1, 1917 was $511,855.46, which was somewhat less than 20% of the total capital and undivided profits (pp. 137, 138).

On April 1, 1917 the capital stock of the Richard Mayer Company.—2,000 shares of a par value of $200,000—had a book value of $429,661. On May 31, 1918, when this stock was seized by the Alien Property Custodian, it had a book value of $447,640.36. On March 31, 1922 it had a book value of $464,677.06. This was substantially all in cash, Liberty Loans, and United States Certificates of Indebtedness.

The Richard Mayer Export Department on Apri l, 1917 had the following assets:

Cash in Commonwealth Trust Company in name of Richard Mayer Company Exp.	$18,325.31
Cash First National Bank in name of Richard Mayer	152,529.25
Sundry securities bought by Richard Mayer and held for his account by Lee, Higginson & Co., of a par value of $210,000	208,647.97
City of Lowell note, par $100,000., held by Richard Mayer, in his safe deposit vault	97,044.44
Due from Smith, Coney & Barrett, approx.	2,000.00
Total	$478,546.97

[fol. 40] This Department owed

To Richard Mayer Co.	$100,000.00	
To Lee, Higginson & Co.	7,013.05	
		107,013.05
Leaving a net balance of		$371,533.92

It will be observed that there was nothing to be liquidated in this Department. The assets were either in cash or in securities which I had bought and not current business assets of Reis & Company.

On September 20, 1918, when seized by the Alien Property Custodian, the assets of this Department either remained as they were or had been changed into other securities which I had bought for my own account. As set out in the final decree at pages 59 and 60 of the printed record in the Circuit Court of Appeals, these had all passed into the form of cash and subsequently into the form of securities bought by me, for myself, as follows:

$5,000	St. Louis and San Francisco Railway Company.	
10,000	Consolidated Gas and Electric Power Company.	
5,000	Public Service of Northern Illinois.	
2,000	St. Louis and San Francisco Railway Company.	
3,000	Atlanta and Charlotte Air Line.	
10,000	Great Western Power Company.	
	(All the above bought before April 6th, 1917.)	
15,000	State of Massachusetts.	
10,000	City of Chicopee.	
30,000	City of Cambridge.	
1,000	General Electric.	
25,000	Federal Land Bank.	
———	(Total cost of all the foregoing, $114,491.52)	$114,491.52
12,000	First Liberty Loan 3½'s.	
100,000	First Liberty Loan 3½'s.	
50,000	Second Liberty Loan 4's.	
———	(Total of the foregoing, $162,000)	162,000.00

[fol. 41]

50,000	Shs. Canadian Gasoline Corp., Ltd.	
5,000	Shs. Gasoline Corp., Pfd.	
5,000	Shs. Gasoline Corp., Com.	
———	(Total cost of the foregoing $45,000)	45,000.00
3	Promissory Notes secured by $285,000. Canadian Gasoline Corp., Ltd. and 15,000 Shs. Canadian Gasoline Corp., Ltd.	
	(Total cost of the foreging $30,000	30,000.00
	Note Flexner-Taylor & Company	1,000.00
	Note Sarah H. Welch	400.00
	Note Consolidated Construction Company	125.00
	Note Sarah H. Welch	250.00
	(All the foregoing bought after April 6, 1917 by me for my own account.)	
	Cash in bank	2,155.61

The stock of the Anglo-American Cotton Company (500 shares of a par value of $50,000) on April 1, 1917 had a book value of

$108,819.15. On June 1, 1918, when it had been seized by the Alien Property Custodian, it had a book value of $113,977.17. At the present time it has no book value, but, on the contrary, a deficit slightly in excess of its entire capital stock.

All of these American assets on April 1, 1917 already stood in my name, except the stock in the Anglo-American Cotton Company which stood in the name of Julius Laible, Manager of that Company.

From this it appears that on April 6, 1917 or thereafter, before the seizure by the Alien Property Custodian, I had reduced the assets into my own name and possession, of a valuation April 6, 1917, as folows:

Export Department	$371,533.92
Stock in Richard Mayer Company	429,661.00
Total	$810,194.92
In addition, there was in America in the name of Julius Laible, the stock in the Anglo-American Cotton Company	108,819.15
Total	$910,014.07
[fol. 42] From this sum there is to be deducted a percentage of profits due to Julius Laible, which has since been determined to be $25,664.66 principal, and $1,511.22 interest to April 6, 1917, a total sum of $27,175.88 allowed and paid to Laible by the Alien Property Custodian	27,175.88
	$882,838.19

It is not clear to me whether or not my interest in the European assets as reported by Price, Waterhouse, Peat & Company includes my original capital contribution to the firm which was made in American assets, namely, 200,000 marks and 5,000 marks, —the equivalent of $48,809.52. For the purposes of this accounting, I am assuming that this is included in the European item and, therefore, should not be retained out of the American item also. If I am wrong in this assumption, the account as hereinafter stated should be changed accordingly, in my favor. Disregarding this possible item, we have my interest of 20% of $882,838.19, just stated, or $176,567.64. Adding this to my interest in the European assets of $511,855.46, gives $688,423.10. This amount at least I was entitled to have and retain as my own out of the American assets on the dissolution of the partnership by the outbreak of the war on April 6, 1917.

In proper accounting I am not made whole unless interest is added to the $688,423.10 from this date. If it is acknowledged, as I believe the fact to be, that the property is to be treated as having been taken over by me as my own on the outbreak of war, then the rate

of interest from the outbreak of war up to the time at which I was deprived of the property by the Alien Property Custodian, should be computed at the rate which the property actually earned. If, on the other hand, the property is to be treated as remaining in the hands of the dissolved partnership, the rate should be the legal one of six per cent. From the time that I was deprived of the property by the Alien Property Custodian, the interest should be computed at the rate of six per cent. This seems to me to follow from the decision of the Court that the taking from me was wrong. [fol. 43] It is not necessary to intimate that there was any personal liability on the part of the Alien Property Custodian in making the seizure. Whether there was or not, he took what by the decree of the Court I was entitled to retain. I would not be made whole by receiving merely the income that the property earned while it was wrongfully in the possession of the Alien Property Custodian. It might have earned much more in my hands. Whoever is to benefit by the accounting by me to the Alien Property Custodian should stand the consequences of the seizure by the Alien Property Custodian rather than I should do so.

Six per cent. on $688,423.10 is:

For one day	$114.74
For one month	3,442.12
For one year	41,305.39
For five years	206,526.93

If five years' interest from April 6, 1917 to April 6, 1922 be added to $688,423.10, it gives the sum of $894,950.03 as of April 6, 1922. To this sum is to be added interest to the date of the receipt back by me of the property from the Alien Property Custodian, as my own. If on its receipt back by me it is not to be treated as my own but as assets to be again liquidated before I can satisfy my claim, then interest should continue to run thereafter. I believe that such should not be the case, but that on the contrary, a reconversion into money is not necessary.

In order to obtain the return of this property from the Alien Property Custodian I made application in due course for a return without any order of the Court. The decree of the Court shows that the property should not have been taken from me, and, therefore, should have been returned without the necessity of court proceedings; it was not returned, I have been obliged to take the Court proceedings which have resulted in the decree. This has made it necessary for me to incur, for counsel fees and otherwise, very heavy expenses the amount of which has not been determined, and the whole amount of which cannot be determined until the matter of this ac- [fol. 44] counting has been completed to the point where further services and expenditures are unnecessary. The amount of these expenses seem to me a proper subject for allowance to me in the accounting. I think that if there were any surplus I should be entitled to pay these expenses out of that surplus.

A bond in the sum of $400,000 with a satisfactory surety, has been

required by the Alien Property Custodian, solely for the purpose of giving that assurance that any surplus would be paid over to him. This step has not been for the benefit of myself in any way, but only for the benefit of the surplus. Therefore, the cost of this bond should be met from the surplus.

This gives the following items of charge:

My interest on April 6, 1917	$688,423.10
Interest to June 7, 1922	213,525.90
Unpaid bills of Francis P. Garland	700.00
Expense of bond	4,000.00
State Street Trust Company commission paid June 7, 1922 by me	255.88
Interest on $18,429.87 from June 7, 1922 to date of its coming payment	Unascertained
Expense of securing return of property to me	Unascertained
Incomplete Total	$906,904.88

Against this I have to report concerning the property returned to me as follows:

On June 7, 1922 I received at the State Street Trust Company in Boston the following:

Sundry bonds listed on page 5 hereof as costing $114,491.52 less one bond of the City of Cambridge for $1,000, and one bond of the General Electric Company for $1,000, and having a market value on return to me of about $101,000 and credited here at cost	$112,491.52
First Liberty Loan 3½'s	93,000.00
Second Liberty Loan Converted 4¼'s	50,000.00
[fol. 45] Shares of stock of the Canadian Gasoline Corporation, Ltd. and Gasoline Corporation as listed on page 5 hereof, of doubtful value but credited back at cost	45,000.00
Three promissory notes for $30,000 in the aggregate which, with accumulating interest at five per cent from April 1, 1918 to June 7, 1922, are credited at	36,275.00
Note of Flexner-Taylor Company (less $100 paid on principal)	900.00
Note of Sarah H. Welch	400.00
Note of Consolidated Construction Company	125.00
Note of Sarah H. Welch	250.00
Check of State Street Trust Company for recently collected income	1,862.75
Draft not yet received but said to be in course to reach me	18,429.87
500 shares stock in Anglo-American Cotton Company, having no assets and having liabilities	—0—

2,000 shares of the capital stock of the Richard Mayer Co. assumed to have no liabilities and having a net worth according to the trial balance of May 31, 1922 rectified by increasing the total of cash in bank and petty cash by $1,282.39 June 7, 1922..... 469,338.58

$828,072.72

It is apparent from the foregoing that not only is there no surplus after the satisfaction of my interest, but that on the contrary there is a substantial deficit. The foregoing is made as a full and proper accounting to the President of the United States or his appointee, the Alien Property Custodian, and constitutes a full compliance with the condition of the bond given by me to the Alien Property Custodian dated June 7, 1922 with the United States Fidelity and Guaranty Company as surety in the sum of $400,000.

[fol. 46] Accordingly, you are hereby requested to acknowledge satisfaction of the condition of this bond, so that the same may be discharged.

In making this accounting I have resolved doubts to my own disfavor. If the account is not acceptable as a whole to you, I reserve the right to change any and all items therein which I may have the right to state differently.

Respectfully submitted, Richard Mayer.

[On back:] A. P. C. Bureau of law. Received Jun. 16, 1922. Referred to —— ——. Answered —— —, ——. Date: —— —, ——. No. —. Alien Property Custodian. Received Jun. 15, 1922. Noted: Date, —— —, ——. Ans'd: Date, —— —, ——.

At the same term to wit, November 20, 1922, the following Answer of Edwin Reis et al. was filed:

IN UNITED STATES DISTRICT COURT

ANSWER OF EDWIN REIS, KARL B. STRAUSS, ESTATE OF LUDWIG REIS, AND ANNY REIS—Filed November 20, 1922

Edwin Reis, Karl B. Strauss, Estate of Ludwig Reis and Anny Reis for answer to the bill of complaint in the above entitled case say as follows:

First. They admit the allegations contained in paragraphs marked and numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 21, 23, 25 of the bill of complaint.

Second. With regard to the paragraph marked and numbered 3 of the bill of complaint, the defendants make answer as follows:

That Anny Reis is not and was at no time a special partner of the co-partnership of Reis & Company, but that the said Anny Reis in-

dividually and as trustee for her minor children is entitled to the [fol. 47] distributive share of Ludwig Reis in the assets of Reis & Company due and payable to him or to his estate upon an accounting and distribution of the assets and property of the firm of Reis & Company.

That the said Ludwig Reis was a "general or personally liable partner" of said firm or co-partnership of Reis & Company, and that he died on the tenth day of January, 1918, without having received any part or portion of his share or interest in the co-partnership of Reis & Company, there having been no accounting or distribution of the assets of the co-partnership prior to his death.

That the said Anny Reis, the widow of the deceased, individually and as trustee for her minor children, Aneliese and Ruth F. Reis, being the sole surviving heirs and next of kin are entitled under German law to all the right, title and interest of the said Ludwig Reis in and to the assets and property of said co-partnership of Reis & Company, as appears by the inheritance certificate hereto annexed and marked "Defendant's Exhibit I."

That the only special partner of the co-partnership of Reis & Company mentioned in the articles of co-partnership was one Mrs. Wilhelmine Reis who died during the summer of the year 1915, and whose share or interest in the firm at the time of her death amounted to the sum of M 250,000.00, which was distributed amongst her heirs or beneficiaries in accordance with German law as follows:

Aug. 31, 1915—Dr. Cahen	M 35,714.29
Aug. 31, 1915—Dr. Simon	35,714.29
Sept. 2, 1915—Dr. Felsenthal	35,714.29
Sept. 8, 1915—Ludwig Reis	34,714.29
Sept 27, 1915—Dr. Wreszinski	34,714.29
Sept 28, 1915—Ernest Kohn	34,714.29
Sept. 28, 1915—Edwin Reis	34,714.29
Sept. 28, 1915—Administrating Expenses for Estate	4,000.00
	M250,000.00

[fol. 48] Third. The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in paragraphs marked and numbered 12 and 13 of the bill of complaint herein.

Fourth. Referring to paragraph marked and numbered 15 of the bill of complaint, the defendants herein admit that there has been no accounting hitherto between the partners of Reis & Company, either as to the assets in Europe or as to those within the possession and subject to the control of the defendant Richard Mayer, but they aver, that the defendant Richard Mayer was unduly negligent in failing to account for the assets within his possession and subject to his control immediately upon the outbreak of the war between Germany and United States before delivering the assets and property to the Alien Property Custodian of the United States of

America, and in failing to state an account between the members of the firm of Reis & Company, who were co-partners at the time of the outbreak of such war, either then or at the time of the passing by the Congress of the United States of the joint resolution of July 2, 1921, terminating the state of way between Germany and the United States, and they aver that they were at all times ready and willing to render an account of the assets in Europe provided the said defendant Richard Mayer would also render a true and correct account of the American assets of Reis & Company.

Fifth. The defendants deny that they have knowledge or information sufficient to form a belief concerning the allegations contained in paragraph marked and numbered 22 of the bill of complaint.

Sixth. By way of answer of the allegations contained in paragraphs marked and numbered 24 and 25 of the bill of complaint the defendants herein annex to their answer as Exhibit II a true and correct account of the assets of the co-partnership of Reis & Company situated in Europe, showing Richard Mayer's interest therein, without any deduction by reason of any dealings or neglect on the part of said Richard Mayer as a member of said co-partnership. The defendants are unable to approximate Richard [fol. 49] Mayer's share in the entire assets of the co-partnership of Reis & Company since they have received at no time an account from the said Richard Mayer of the assets in his possession and subject to his control as the partner in charge of the American branch of the business of Reis & Company.

As a first separate and distinct defense and by way of reply to the allegations of the answer of Richard Mayer, Richard Mayer Company and the Anglo American Cotton Company interposed herein, the defendants allege:

Seventh. That the account annexed to the answer of the aforesaid defendants as Exhibit A is false and untrue, and that the defendant Richard Mayer knows the same to be false and untrue.

Eighth. That the instrument dated February 7, 1917, upon which the defendant Richard Mayer expressly relies in rendering his account as entitling him to the American assets of Reis & Company was in fact prepared in the month of February of the year 1919, at which time it was acknowledged by a German notary, and that it was immediately cancelled and nullified by a writing executed simultaneously therewith, similarly signed and acknowledged. We annex hereto as Exhibit III copy of the cancellation agreement signed by Karl Mayer, the absence trustee who signed the instrument relied upon by Richard Mayer, and also the translation thereof, which is marked "Exhibit IV." That said writing or instrument relied upon by Richard Mayer was furnished him at his request and for his own use upon receipt of a letter from him and from his then attorney, Guy Murchie, and upon receipt of a cable from the said Richard Mayer through the Spanish Embassy requesting the preparation of such an instrument. True copies of such communications

are annexed hereto as Exhibit V. That immediately upon the outbreak of the war, and without the knowledge, consent or authorization of the members of the firm of Reis & Company in Germany, the defendant Richard Mayer asserted and represented to the Alien Property Custodian of the United States that he had sole legal and equitable ownership of the entire capital stock of the Richard Mayer [fol. 50] Company and the Anglo American Cotton Company, and of miscellaneous stocks and bonds and notes receivable deposited with Messrs. Lee, Higginson & Company of Boston, Mass., and with the First National Bank of Boston, Mass., and thence transferred to the custody of the State Street Trust Company of Boston, Mass. He stated in an affidavit under date of November 6, 1918, which was delivered to the Alien Property Custodian, Washington, D. C.:

"That the partnership agreement between me and the other members of Reis & Company was dissolved in any event on April 6, 1917 upon declaration of War between the United States and Germany; that all property and money which may have formerly been used for partnership business was withdrawn from the partnership without delay and that no part of any property has been used by me since April 6, 1917 for the benefit of or in the interest of any Alien enemy or an ally of the enemy of the United States; that I took over the ownership of the stock of Richard Mayer Company and the Anglo American Cotton Company; that I have ever since treated all said property as my own; that I have invested it outside of any partnership purposes in private investments; that my said partners have never made any claim upon it, and I believe they have no claim upon it."

Prior to the receipt of the above named communications there had never been any discussion, correspondence or communications whatsoever between the German partners and the said Richard Mayer regarding any transfer of any part of the assets of the firm of Reis & Company, wherever situated, or regarding any consent to such transfer. That whatever papers or writings were furnished to the defendant Richard Mayer by his German partners were furnished to him after he had taken a definite stand toward the Alien Property Custodian of the United States asserting his individual ownership of the American assets of Reis & Company, and they were all prepared and sent from Switzerland during the year 1919, in com- [fol. 51] pliance with his instructions for use by him at his own risk, and they were not binding upon the German partners, having been cancelled and rendered null and void at the time they were made, all of which the defendant Richard Mayer well knew.

Ninth. That at all times aforesaid the members of the firm of Reis & Company other than Richard Mayer, were not represented by an American attorney and had no knowledge of any action then pending in the American courts affecting or involving the partnership property, and they were advised by the said Richard Mayer in his cable of February 12, 1919 (Defendants' Exhibit V), that the property was advertised for sale by the Alien Property Custodian.

That the instrument relied upon by the defendant Richard Mayer in his accounting was furnished to him for the express purpose of preventing the sale of the partnership property by the Alien Property Custodian. On information and belief, that no action was commenced by the defendant Richard Mayer until the month of April, 1919. That in said action, which is referred to in the bill of complaint and in the answer of the defendant Richard Mayer as "In No. 925 in Equity in this court," the defendants appearing herein were not represented by an attorney, and they did not file an answer or an appearance although they had notice thereof.

Tenth. That the instrument relied upon by the said Richard Mayer in his accounting is null and void, on the ground that at the time of its execution Ludwig Reis, one of the parties thereto, was dead, having died on the tenth day of January, 1918, and on the further ground that the absence trustee purporting to represent Richard Mayer in the transaction had no authority under German law to sign or execute such an instrument; and on the further ground that an instrument of that character required judicial or notarial authentication; and on the further ground that the absence trustee was improperly appointed, the court having no jurisdiction to appoint the same under Section 1911 of the German Civil Code, which provides:

"1911. A curator absentis may be appointed for a person of full age, who is absent and whose place of residence is unknown, to [fol. 52] take charge of his property affairs, so far as is necessary. * * *

"The same rule applies to an absent person whose place of residence is known, but who is prevented from returning to take charge of his property affairs."

Richard Mayer's address was always known to his German partners, and Richard Mayer was not prevented from "returning" at the time the absence trustee was appointed, to wit, in August of the year 1916; and on the further ground that the German court has no jurisdiction to appoint an absence trustee for an American citizen to bind him in the making of agreements or in the signing of instruments; and on the further ground that under German law, the acts of such absence trustee in the signing of an instrument such as the one relied upon by the defendant Richard Mayer in his accounting were null and void, and in contravention of law as laid down by Sections 1915, 1821, 1822, 1823, 311, 128, 125 of the German Civil Code. That any and all acts of Karl Mayer, brother of the defendant Richard Mayer, in reference to the aforesaid instrument or in regard to Richard Mayer's interest in the firm of Reis & Company were unauthorized and could not be ratified under German law or under American law, being in contravention of the laws of the United States, particularly of the act known as "Trading with the Enemy Act."

Eleventh. That with regard to the assets of Reis & Company as they existed on April 6, 1917, at the time of the outbreak of war

between the United States and Germany, the European partners at no time "took over all the European assets and treated them as their own," but on the contrary the defendant Richard Mayer's undistributed right, title and interest thereto was always recognized by them and that the defendant Richard Mayer has even after the outbreak of the war been carried as a partner on the books of the firm of Reis & Company, and that his name remained in the Handels-register, a book in which the names of partners of German firms are required by law to be recorded.

Twelfth. That there never existed any arrangement or agreement, express or implied, between the said Richard Mayer and the defend-[fol. 53] ants herein in regard to the ratio of marks to dollars used in computing the amounts due any of the partners.

Thirteenth. That there never has been an accounting or a distribution in partnership dissolution and liquidation between the defendants herein and the defendant Richard Mayer, and that the defendants have at no time renounced their claims against the assets in the United States belonging to the partnership of Reis & Company in favor of Richard Mayer.

Fourteenth. That upon any accounting the defendants herein will be entitled to surcharge the distributive share of the said Richard Mayer, the defendant herein, in substantial amounts for gross misconduct in the administration of the American branch, both prior to and after the outbreak of the war between the United States and Germany.

Fifteenth. That since the year 1915 and continuously thereafter, the defendant Richard Mayer has wrongfully, and in violation of the articles of co-partnership, converted a large amount of the assets of Reis & Company to his own use, and that in violation of such articles of co-partnership he has made unauthorized and improper investments, and unauthorized and improper and unlawful expenditures of the funds of the partnership referred to whereby said funds and assets have been wasted and lost and said Richard Mayer the defendant herein has thereby become indebted to said partnership in the amount of said losses and for interest upon the sums wrongfully converted to his own use or wrongfully applied.

Sixteenth. That particular instances in connection with the misappropriation of partnership funds and assets are as follows:

Withdrawals of partnership funds for private and individual use in violation of the partnership agreement, thereby depriving the business of the use of the capital intended for it.

Speculating in stocks, bonds and other securities in violation of the partnership agreement.

Making of loans and purchasing notes and other obligations in violation of the partnership agreement.

[fol. 54] Failure to render accounts and to make remittances when due.

Absenting himself from the partnership business without a proper excuse for three and four months at a time, resulting in serious losses to the firm of Reis & Company.

Making of improper expenditures.

Appropriating firm assets and holding them out against the other partners in violation of the co-partnership agreement.

The defendants herein are unable to enumerate all the acts of misconduct as a partner of the firm of Reis & Company chargeable to the defendant Richard Mayer herein in the absence of a correct and a complete accounting by said Richard Mayer of the conduct of the American branch of Reis & Company in the United States, and they beg leave to offer evidence at the trial of such further and different acts of misconduct, mismanagement or improper performance of duty as may be disclosed by a more detailed and complete accounting of said Richard Mayer.

Sixteenth. That the American assets of Reis & Company consisted, in part, of the entire capital stock of the Richard Mayer Company and the Anglo American Cotton Company, both corporations founded and organized under the laws of the State of Massachusetts, from partnership assets and from funds belonging to the firm of Reis & Company, and that their capital stock and assets were equitably the property of said partnership and that said capital stock was at no time the property of Richard Mayer.

Wherefore, these defendants say that the bill of complaint should be dismissed with costs as to the defendants herein other than the defendant Richard Mayer, and that, as to him, the account rendered by the said Richard Mayer in his answer be rejected and that it be declared ineffective and not binding upon the defendants herein, and the said Richard Mayer be required to account for the assets in his hands or subject to his control belonging to the co-partnership of Reis & Company.

By Their Attorney, Clifford B. Warren, 53 State Street, Boston, Mass.

[fol. 55] *Duly sworn to by Karl B. Strauss. Jurat omitted in printing.*

EXHIBIT I TO ANSWER OF EDWIN REIS ET AL.

Grand Ducal Notary's Office II, Mannheim, as Court for Administration of Estates Draft

Inheritance Certificate

Issued in consequence of Paragraph 2353 of the Civil Laws, Article 147 of the Introduction Law connected therewith and Paragraph 45 of the Badenese Justice Police Laws.

The, in Mannheim, Friedrichsplatz 10 living bequeather.

Ludwig Reis, Manufacturer.
Died in Mannheim on January 10th, 1918.
The instituted investigations and the proofs secured by the undersigned Notary's Office as Court for Administration of Estates had the result that the following are the lawful heirs of his bequest.

1. His Widow, Mrs. Anny Reis, nee Bayerthal, share of inheritance ¼ tel.

2. His children.
a. Anelise Reis, born February 6th, 1912 at Heidelberg, share of inheritance ⅜ tel.
b. Ruth Friederike Reis, born September 9, 1914 at Heidelberg, share of inheritance ⅜ tel.
Mannheim, November 18th, 1918.
Grand Ducal Notary's Office Mannheim II.

(Signed) Knecht.

[fol. 56] The above copy conforms to the original draft presented to me.
Mannheim, February 18th, 1919.
(Signed) Knecht, Grand Ducal Notary at the District Court Seat, Mannheim. (Seal Notary's Office II.)

EXHIBIT H TO ANSWER OF EDWIN REIS ET AL.

Account of the Copartnership of Reis & Company

European Assets

We are now rendering an account of all the assets of Reis & Company in our possession and subject to our control, showing particularly the European Assets as distinguished from the American assets over which we have no control at present.

For the purpose of this account *was* are taking the date of April 6, 1917 as the date of dissolution of the firm. Being unable to state an account as of that particular date, no inventory having been taken at that time, we shall arrive at Richard Mayer's interest in the European assets by comparing the balance sheets of December 31, 1916 and of December 31, 1917 and by striking a fair average for the period from December 31, 1916 until April 6, 1917 on the basis of the profits for the entire year 1917, this being the only feasible method of determining Richard Mayer's share in the assets subject to our control as of April 6, 1917. In the absence of an inventory being taken on the 6th day of April 1917, it is impossible for anyone to determine at this date the exact values of the property of Reis & Company which were on hand in Europe on April 6, 1917. We are pursuing exactly the same method which was followed by Price, Waterhouse when ascertaining the figures of Reis & Company. It will be readily seen on comparing their figures with ours, that our

figures are substantially similar and we have supplemented the omissions contained or referred to in the report of Price, Waterhouse, which, as they explained, were due to our failure to show them certain books, and to our failure to permit inspection of all records showing the entries prior to December 31, 1916, and subsequent to [fol. 57] January 1, 1918. These books and entries were withheld from them because they would have disclosed the fact that Richard Mayer was carried as a partner even up to the time when the examination was made, namely, the Fall, 1920. All books of original entry including those so withheld will be produced at the tiral.

By way of supplementing the Price, Waterhouse report regarding the Manchester branch of the business of Reis & Company, we state the following:

The business with Manchester was carried on as though the Manchester office were a customer rather than an independent branch of the business. The Manchester office had no capital, all books being kept in Germany, and was functioning as buying and selling agent. The assets there belonging to Reis & Company, consisted only of a willowing plant and some office furniture. When the War broke out between England and Germany, or soon thereafter these assets were taken over by the British Custodian and the business was liquidated. The net result of the liquidation of the Manchester assets consisting of the aforesaid equipment and office furniture and including some outstanding customer's accounts, amounted to about £4,500, which in accordance with the arrangement entered into between England and Germany can only be claimed by Reis & Company at the prewar rate of about 20 marks to the pound, making a total of about 90,000 marks present value. At the outbreak of the War Reis & Company was owing to the Manchester Branch on their books an amount of about £35,000—or M 734,297.50. This same amount appears as a debit item, namely under Manchester Current Account in the liabilities ascertained by Price, Waterhouse as per December 31, 1916.

Owing to the depreciation of the mark in 1917 this liability had to be increased to the sum of M 931,303.97, which was then equivalent to the Sterling amount previously mentioned. The Manchester account has not yet been disposed of entirely. We recently made a payment of seven hundred thousand odd marks as an installment [fol. 58] against our English debt to the German trustee. A further similar payment will have to be made yet, but for the purpose of this accounting we consider this account closed, thereby, benefiting Richard Mayer in not debiting him with any additional amounts that may still have to be paid by the co-partnership of Reis & Company in this connection.

Hereto annexed as Exhibit A, is a balance sheet of December 31, 1916, consisting of eight pages.

Hereto annexed as Exhibit B, is a balance sheet as of December 31, 1917, consisting of seven pages.

—, as Exhibit C, is a statement showing the distributive shares of the several co-partners of Reis & Company since 1913 until the end of the year 1917.

The figures ascertained by Price, Waterhouse as the distributive shares of the partners per end of year 1917 differ materially from the figures appearing in Exhibit C, because as pointed out above the original books containing the private accounts of the co-partners had been withheld from Price, Waterhouse, but they correctly state in their report that they "do not feel justified in placing too much reliance upon the figures contained in these accounts."

In rendering this account we have taken into consideration not only the Book Values of the assets of Reis & Company as of April 6, 1917, but also their actual values as of that date. The entire assets can be readily divided into two groups, one consisting of Merchandise, Accounts Receivable, Cash on Hand, and the other consisting of Fixed or Immovable assets, such as Real Estate and Machinery. The first group mentioned was turned into cash during the year 1917. The second group with the exception the Herzberg and Franzenthal plants which have been liquidated, and for which the cash received appears in the account, is still on hand today, and we have taken into consideration in regard thereto the highest market value since [fol. 59] April 6, 1917 giving Richard Mayer the benefit of any enchancement in value since that date to which he may possibly be entitled.

Exhibit C shows that we have stated Richard Mayer's distributive share in two ways assuming on the one hand the Book Value of these fixed assets and, on the other hand, the actual value of such assets up to date.

No allowance has been made in this accounting for the good will of Reis & Company. The good will at the time of the outbreak of the War between Germany and the United States was completely destroyed by the outbreak of the War. It is probably due to the same reason that no allowance was made for the good will of the American branch of the business by Richard Mayer in the purported account he rendered.

With regard to reserves for losses on contracts and reconstruction it may be said that these reserves were entirely used up for the making good of losses incurred through unfavorable trade contracts entered into prior to the War, and in order to make good the depreciation, cost of repair to buildings and machinery, and reconstruction work made necessary through the War.

Mayer's statement that a fixed rate of exchange was arranged between the partners is absolutely unfounded, as no such arrangement was ever made. The partnership agreement which alone governs all questions between the partners contains no reference to such an agreement. When Mayer entered the partnership it was not dollars which he brought in, but merchandise and accounts receivable, which were credited to him in marks, namely the amount of M 206,-054.02. His share of the first year's profits since he entered the partnership was also credited to him in marks, and at the end of the fiscal year he received a statement showing the balance of his capital account to his credit, also in marks. When he was in Europe in 1914, he as a partner of the firm, looked into his affairs and again saw that the accounts were kept in marks, and marks only. This

had been the practice of the firm ever since it had been started in 1897. All accounts dealing with the affairs in Germany or with those of the branch offices in America, and later on in England were car- [fol. 60] ried on and conducted at the head office always in marks. The branch offices simply sent their monthly and annual statements and stocktaking sheets and these were embodied in the general balance sheet drawn up in Germany. Whatever rate of exchange was adopted in transmuting foreign assets into marks is quite immaterial, and was for bookkeeping purposes only, distribution would ultimately have to be made to the partners on the basis of marks on hand, and they would all be treated alike upon such distribution. Whenever marked fluctuations occurred in the rate of exchange, such fluctuations were at once taken into consideration.

Richard Mayer quite correctly states that no question of exchange is involved in this accounting. The German law recognizes only one kind of German currency without regard to the time when liability or right may have accrued. The law of August 4th, 1914 distinctly says that the currency of the German mark need no longer be based on a certain gold standard, and paper currency was made compulsory. Mayer, as well as all the other partners, have to stand alike the consequences of any rise or fall in the mark.

Deductions are also made in this account for moneys paid to Richard Meyer's relatives in Germany pursuant to an order given by him when in Germany in 1914. We are further deducting certain sums for payment made on his behalf for taxes due by reason of profits earned up to 1917. The German Government levied these taxes against Richard Mayer in the same way as against all other partners, for he was carried as a partner on the books of the firm right along, and his name remained in the Handelsregister as a registered partner of the firm. The total amount of such disbursements made on behalf of Mayer is M 316,832.40.

American Assets

According to our account, Mayer's interest in the European assets as of April 6, 1917 is not as he says $511,855.46 but M 1,836,353.80 as shown by our books. The American assets as enumerated by Richard Meyer consist of securities and investments of a very speculative character, such as are entirely foreign to the business of [fol. 61] Cotton Waste and kindred lines for which the partnership of Reis & Company was formed. All of the assets in the form as they now appear, excepting Cash on hand must be deemed illegal investments, the investments having been made in violation of the partnership agreement. The withdrawals of funds from the partnership business were made by Mayer as early as 1915 without the knowledge or consent of the European partners, and substantial surcharges will be established against Richard Mayer for such unlawful withdrawals. Surcharges will also be established against Richard Mayer in connection with the conduct of the business of the Anglo-American Cotton Company and his refusal to liquidate the same at a time when substantial assets were still on hand. The losses occasioned

to the partnership of Reis & Company through Richard Mayer's misconduct, interference and mismanagement in this respect are at least the sum of $50,000.

Regarding the interest items with which Richard Mayer credits himself, it is not acknowledged by us that either he, or his European partners actually appropriated any part of the partnership assets to their own use. Such a claim is entirely contrary to fact, as no assets either in Europe or in America were taken over at the outbreak of the War by any agreement express or implied. Mayer's interest credits to himself are based on the assumption "that the property is to be treated as having been taken over by me as my own on the outbreak of the War." He tries to establish a mutual consent by which such transfers are supposed to have been effected. Nothing was done, however, with regard to the European assets at any time since or before the outbreak of the War, and Richard Mayer was the only one who, at the outbreak of the War, affirmatively took the position toward the Alien Property Custodian that there had been a transfer of partnership assets. If he did take over the assets on hand in America and treat the same as his own, he would normally be chargeable with interest on account of his misconduct in appropriating firm assets to his own use, except that War conditions might possibly furnish an excuse for such an ostensible change of owner-[fol. 62] ship. In so far as his conduct was purely ostensible the German partners had no objection to his asserting any ownership over the American assets, and for that reason no claim is made by us for interest on the distributive shares of the German partners in the American assets, unless it will appear that Richard Mayer was negligent after dissolution by War of the partnership, in liquidating the American assets and accounting to his co-partners before War conditions and War time legislation in the United States made such accounting impossible.

Owing to the outbreak of the War in 1914 and the difficulty of communication between America and Germany it was thereafter impossible to keep records of the American branch of the business of Reis & Company in Germany, and accordingly separate records were thereafter kept by Richard Mayer, who was in charge of the American end of the business. Complete responsibility for an accurate accounting of the American assets must, therefore, rest upon Richard Mayer. Assuming that the figures given by Richard Mayer, who was in charge of the American end of the business. Complete responsibility for an accurate accounting of the American assets must, therefore, rest upon Richard Mayer. Assuming that the figures given by Richard Mayer, as of April 6th, 1917 that the assets in America amounted to $910,014.07 are correct, we beg to point out that these assets are subject to aggregate liability of 11½% equal to $104,-651.61 for bonus payments due various employees of the firm, namely:

Mr. Alex Leiser	5%
Mr. Gustav Ely	5%
Mr. Friedrich Heinstein	1%
Mr. Adolph Senft	½%
Making a total of	11½%

These persons are entitled to these bonuses under written agreements some of which were drawn up by Mayer himself.

Despite the dissolution of the partnership at the outbreak of the War in the year 1917, the assets of the firm of Reis & Company in Europe were not in fact liquidated, for the reason that the liquidation of the entire business including the American assets was impossible. Our account shows the reasonable value of all assets in our hands as of April 6, 1917 with the exception only of those assets [fol. 63] then on hand which have since been sold, the proceeds of which sales however appear in our books. We have set forth fully in our answer that there is no basis whatsoever for the claim made by Richard Mayer that the German partners and the American partners divided the assets by mutual consent. Such an assertion defies all reason since the American assets at the time when the instrument dated February 7th, 1917 was actually drawn up, namely February 1919 by far exceeded in value the value of all European assets of the firm. Mr. Mayer's claim is obviously advanced for the purpose of justifying and supporting statements made by him to the Alien Property Custodian.

On the question of costs, and expenses incurred in connection with litigation, we believe the entire burden should be borne by Richard Mayer inasmuch as such disbursements resulted from his own initiative and without the consent and approval in the first place of the other members of the co-partnership. Whatever was done by the other partners in the way of strengthening the claim as asserted by Richard Mayer as against the Alien property Custodian was done purely for the purpose of shielding Mayer against the consequences of a wrong originally committed by him. Legal action would have been unnecessary if Richard Mayer had truthfully stated the facts and declared the real ownership of the American assets found in his hands and which, it is true, for the greater part appeared in his individual name.

EXHIBIT III TO ANSWER OF EDWIN REIS ET AL.

(Copy)

Friedrichsfeld, den 7 Februar, 1917.

Reis & Co., Friedrichsfeld (Baden):

Die heute zeischen den Gesellschaftern der Firma Reis & Co., Herrn Edwin Reis, Ludwig Reis und Karl B. Strauss einerseits und Herrn Richard Mayer, resp. dessen gesetzlich ernanntem

Abwesenheitspfleger, Harrn Karl Mayer, Rohrbach andererseits getroffene Vereinbarung vom 7, Februar 1917 betreffs der Verteilung des Gesellschaftsvermogens der Firma Reis & Co. im Falle [fol. 64] des Kriegsausbruches mit Amerika, ist ausdrucklich nur eine Proforma-Abmachung, um die amerikanischen Vermogenswerte der Firma Reis & Co., vor Confiscation zu schutzen.

In diesem Sinnes ist die oben genannte Vereinbarung getroffen worden, was die Uterzeichneten hiermit ausdrucklich anerkennen.

Friedrichsfeld, den 7 Februar, 1917

(Sig.) Karl Mayer.

EXHIBIT IV TO ANSWER OF EDWIN REIS ET AL.

The agreement entered this day between the partners of the firm of Reis & Company: Messrs Edwin Reis Ludwig Reis and Karl B. Strauss on the one hand and Mr. Richard Mayer, or rather his duly appointed absence trustee, Mr. Karl Mayer, Rohrbach, on the other hand, dated February 7th, 1917 concerning the distribution of the partnership property of the firm of Reis & Company in the event of the outbreak of a War with America, is expressly only a proforma arrangement in order to safeguard the American assets of the firm of Reis & Company against confiscation.

In this sense the above agreement has been entered into, a thing which is expressly recognized by the undersigned.

(Sig.) Karl Mayer

Friedrichsfeld, February 7, 1917.

EXHIBIT V TO ANSWER OF EDWIN REIS ET AL

(Copy)

William W. Butler, Guy W. Cox, Guy Murchie, James F. Bacon

Telephones: 1300-1301 Fort Hill

Law Offices of Butler, Cox, Murchie and Bacon, Eighth Floor, 77 Franklin Street, Boston

Boston, December Sixth, 1918.

Karl B. Strauss, Esq., P. O. Box 6091, Zurich, Switzerland.

DEAR SIR: Mr. Mayer has consulted me concerning a personal claim for property formerly in his custody, and advises me that [fol. 65] you are an English subject now resident in Switzerland, and were a member of the firm of Reis & Company.

It is important that you should have notice of his claim and also if you can, to enable to set forth the facts as they are to the United States Courts which will hear the claim. The Alien Prop-

erty Custodian of the United States, having taken over this property the procedure is to file a claim with him and if not allowed to take the matter to the courts for the determination of the Court on the facts.

The A. P. C. for some reason has been hostile to the claim, although the local evidence obtained here seems to me clearly to bear out Mr. Mayer's contention. However, the evidence is not complete as it might be and I think that you may be able to supply the additional data. We require the following evidence:

(1) The original partnership agreement signed by the partners or a properly certified copy of which would meet requirements of our rules of evidence before a court in the United States.

(2) Reliable evidence of the net worth of the partnership as of April 6, 1917. In any event, the partnership agreement was terminated by the Declaration of War between Germany and the United States and the distribution of the funds in the United States would depend somewhat upon the net worth of the partnership at the time of its termination. The funds in the United States amounted to approximately $900,000 net.

(3) Evidence of Mr. Mayer's right to withdraw funds from the partnership, to invest the same and hold them permanently against his partners. Under the partnership agreement, as I understand it, this right existed. Mr. Mayer had put in originally $50,000 and after the assets of the partnership distributable to him equally the share of the largest contributing pratnership which I understand was Mr. Edwin Reis, then pro rate above that reserve Mr. Mayer had no right to withdraw funds and retain them as his own. This he did, on information received from Mr. Laible, from yourself and [fol. 66] Mr. Reis as to the net worth of the partnership in 1916.

(4) Evidence of the consent of Edwin Reis and yourself and of the Estate of Ludwig Reis to Mr. Mayer's taking over the American assets as his share of the partnership in dissolution. That is to say, I understand that you consented to this method of settlement and if so, Mr. Mayer would be entitled to withhold all his property against the Alien Property Custodian and against his partners.

(5) It may be possible for you to come over to the United States with this evidence. It should be in proper shape to accomplish the results required. If you cannot come I think it will be advisable to take your oral deposition and that of Mr. Edwin Reis and the representative of the Ludwig Reis Estate in Switzerland if it is possible by order of the United States court.

In the meantime, any facts bearing on the above situation that you can send to me, I shall much appreciate.

Will you also, let me have your permanent address in case you are contemplating at any time leaving Zurich?

Yours very truly, (Sig.) Guy Murchie.

A Hy GM: M P.

Exhibit V

Copy

Em' ajada de Espana, Am. Div. 835, 2109 en Berlin

Mr. Edwin Reis, Friedrichsfeld, Baden:

The Royal Spanish Embassy begs to inform you, that the following message has been sent from the United States for you:

"Kindly send me partnership agreement want original or copy competent as court evidence necessary have agreement because property seized by alien property custodian seventeen partnership terminated in any event by declaration of war immediate response im-
[fol. 67] portant because property advertised for sale by custodian.
Richard Mayer."

The Embassy advises you to send immediate answer, which can be forwarded through same.
Berlin, February 12, 1919.

Exhibit A to Answer of Edwin Reis et al.

Reis & Company

December 31, 1916.

Land and Buildings	M 252,037.66	
Plant and Machinery	35,454.–	
Furniture and Fixtures Tools and Utensils	1.–	
Merchandise	1,371,553.63	
Bills of Exchange	256.30	
Cash on Hand	5,811.29	
Bonds	369,626.80	
Acct. Receivable	6,405,799.87	
Accts. Payable		M 4,007,764.85
Mortgage		145,874.62
Capital		3,119,196.78
Profit and Loss		1,167,704.30
	M 8,440,540.55	M 8,440,540.55

The Capital and Profit & Loss on this balance sheet have not been diminished by the sum M 120,340.18, which, in correct accounting should properly appear as an expense item, representing bonuses due employees, pursuant to written agreements with them.

These bonuses were deducted from moneys due the several co-partners whose distributive shares were reduced by proportionate amounts.

The capital and profit and loss per December, 1916, should therefore, be reduced from M 4,286,901.08 to M 4,166,560.90.

[fol. 68] Investment Account December 31, 1916

4½% German Treasury Certificates Par value M 250,000.– Cost	M 237,500.–
5% German War Loan Certificates Par value M 1,900,000.– Cost	M 1,862,000.–
Total	M 2,099,500.–

Distributed amongst the Partners, as shown by the books, as follows:

4½% Treasury Certificates Edwin Reis	M 65,312.50
5% War Loan Certificates " "	512,050.–
4½% Treasury Certificates Ludwig Reis	65,312.50
5% War Loan Certificates " "	512,050.–
4½% Treasury Certificates K. B. Strauss	59,375.–
5% War Loan Certificates " " "	465,500.–
4½% Treasury Certificates Richard Mayer	47,500.–
5% War Loan Certificates " "	372,400.–
Total	M 2,099,500.–

Capital in Switzerland December 31, 1916

Account opened March 9, 1916	M 4,046,528.40
4% Interest to June 30, 1916	49,457.55
4% Interest to Dec. 31, 1916	81,919.70
	M 4,177,905.65
Less Postage	.65
	M 4,177,905.–

Erste Deutsche Kapok Fabrik December 31, 1916

Merchandise	M 35,707.24	
Cash	499.86	
Machinery	1.–	
Bills of Exchange	125.78	
Accounts Receivable	177,367.63	
Reserves for Bad and Doubtful Accounts and Discounts		M 10,000.–
[fol. 69] Reserves for Plant Upkeep and Improvements ordered		25,000.–
Upkeep and Improvements ordered:		
Accounts Payable		4,774.27
Profit and Loss		51,427.74
Capital		122,449.50
	M 213,651.51	M 213,651.51

Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal

December 31, 1916.

Capital invested in above factory.....	M 360,000.–

The profit made per December 31, 1916 of Kr. 8,633.82 @ 64= M 5,525.64 was withdrawn and is included in the Capital account of Reis & Company, per December 31, 1916.

Baumwollbleicherei Herzberg G. M. B. H. Herzberg

December 31, 1916.

Capital invested by Reis & Company in above Factory	M 535,085.55
Less Loss per December 31, 1916.....	23,760.28
	M 511,325.27

Recapitulation of European Assets of Reis & Company per December 31, 1916

Reis & Company, Friedrichsfeld.....	M 4,166,560.90
Investment Account (Bonds)	2,099,500.00
Swiss Account	4,177,905.–
Kapok	173,877.24
Algersdorf (Franzenthal)	360,000.–
Herzberg	511,325.27
	M 11,489,168.41

[fol. 70]

European Assets and Partners Distributions December 31, 1916

		Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co.	M 4,166,560.90	1,445,154.47	1,612,787.27	458,419.28	650,199.88
Investment Account (Bonds withdrawn from the business)...	2,099,500.00	577,362.50	577,362.50	524,875.00	419,900.00
Capital in Switzerland..	4,177,905.00	1,148,923.88	1,148,923.87	1,044,476.25	835,581.00
Kapok Factory	173,877.24	54,298.73	54,298.73	37,725.82	27,553.96
Algersdorf (Franzenthal)	360,000.00	99,000.00	99,000.00	90,000.00	72,000.00
Herzberg	511,325.27	140,614.45	140,614.46	127,831.31	102,265.05
	M 11,489,168.41	3,465,354.03	3,632,986.83	2,283,327.66	2,107,499.89

Messrs. Price, Waterhouse stated in their accounting, as per page 134, the above total assets as...		M 11,302,951.84
Which, according to above figures amount to.....		11,489,168.41
Making a difference of.....		186,216.57

Which difference is accounted for as follows:
Messrs. Price, Waterhouse quote on page 132 in their accounting:

Swiss capital and investments as.	M 6,090,681.19	
of which the Swiss capital alone, see page 145 of their accounting, amounts to	4,177,366.15	
Leaving for investments.	M 1,913,315.04	
Whereas the investments amounted to	M 2,099,500.	
Producing a difference of.....		M 186,184.96
[fol. 71] Messrs. Price, Waterhouse quote the profit for the Franzenthal factory, as per page 134 of their accounting, as	Kr. 9,156.72	
Which amount is incorrect, and, as per page 131, according to their accounting should be....	Kr. 8,633.82	
Which latter amount converted at exchange rate of 64, equals	M 5,525.64	
instead of, as per page 134 of their accounting	5,494.03	
producing a further difference of		M 31.61
Making a total difference of as quoted above		M 186,216.57

From the above it will be seen that the share of Richard Mayer amounts to M 2,107,499.89.

The amount reported by Price, Waterhouse as per page 135, of M 2,107,449.89 is a typographical error, as the amount is correctly quoted on page 137 of their report with M 2,107,499.89.

EXHIBIT B TO ANSWER OF EDWIN REIS ET AL.

Reis & Company

December 31, 1917.

Land and Buildings	M 264,834.66	
Plant and Machinery	38,297.–	
Furniture and Fixtures Tools and Utensils	1.–	
Merchandise	866,519.02	
Cash on hand	3,381.25	
Bonds	409,657.80	
[fol. 72] Accounts Receivable, including Bank Balances	4,771,883.03	
Accounts Payable		M 3,536,770.61
Mortgage		143,155.71
Capital		2,070,314.90
Profits and Loss		604,332.54
	M 6,354,473.76	M 6,354,573.76

The Capital and Profit and Loss on this balance sheet have not been increased by the sum of M 145,583.99 which in correct accounting should properly appear as Accounts Receivable or similar item, being overdrawings on the part of such employees on account of bonuses due them. The sum of M 145,583.99 was subsequently deducted from moneys due such employees at a later period.

The capital and profit and loss per December 21, 1917, should therefore be increased from M 2,674,647.44 to M 2,820,231.43.

Capital in Switzerland December 31, 1917

Balance January 1, 1917	M 4,177,905.–
4% Interest to June 30, 1917	83,558.10
4% Interest to December 31, 1917	85,229.25
	M 4,346,692.35
Less Postage	1.35
	M 4,346,691.–

Erste Deutsche Kapok Fabrik December 31, 1917

Merchandise	M 44,312.95	
Machinery	1.–	
Accounts Receivable	174,624.40	
Reserves for Bad and Doubtful Accounts and Discounts		M 10,000.00
[fol. 73] Reserves for Plant Upkeep and Improvements		25,000.00
Accounts Payable		1,609.63
Capital		158,344.73
Profit and Loss		23,983.99
	M 218,938.35	M 218,938.35

Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal December 31, 1917

Capital invested per January 1, 1917	M 360,000.–
Additional Capital invested during 1917	180,000.–
Total Capital Investment	M 540,000.–
Profit per 1917	85,665.59
	M 625,665.59

The property carried on our books under the name of Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal, was acquired during 1914, through purchase from receiver in Bankruptcy as a going concern.

About June 30th, 1915 a company with limited Liability was formed and all the assets and property aforesaid, were turned over by Reis & Company to this Company.

In February, 1920 the entire right, title and interest of Reis & Company in and to the Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal, was sold for the sum of M 750,000, which was the fair and reasonable market value.

Baumwollbleicherei Herzberg G. M. B. H. Herzberg December 31, 1917

Capital invested per January 1, 1917	M 511,325.27
Additional Capital invested during the year 1917	144,914.45
Total Capital Investment	M 656,239.72
Less Loss per December 31, 1917	20,104.61
	M 636,135.11

[fol. 74] The above property was acquired through purchase as a going concern during the year 1915, after which a company with Limited Liability was formed.

Owing to the long duration of the War in Germany, there was no new raw material available which could be treated at the Factory, in consequence of which the operations resulted in losses, whereupon it was decided to dispose of the property.

The sale of this property took place finally on October, 1919, for the sum of M 1,260,000, which was the fair and reasonable market value.

Recapitulation of European Assets of Reis & Company per December 31, 1917

Reis & Company, Friedrichsfeld	M 2,820,231.43
Swiss Account	4,346,691.–
Kapok Factory	182,328.72
Algersdorf	625,665.59
Herzberg	636,135.11
	M 8,611,051.85

European Assets and Partners' Distribution December 31, 1917

		Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co	M 2,820,231.43	975,622.90	682,064.72	319,122.36	843,421.45
Capital in Switzerland	4,346,691.00	1,195,340.03	1,195,340.02	1,086,672.75	869,338.20
Kapok Factory	182,328.72	46,595.60	46,595.59	45,996.00	43,141.53
Algersdorf (Franzenthal) ..	625,665.59	172,058.04	172,058.04	156,416.39	125,133.12
Herzberg	636,135.11	174,937.16	174,937.15	159,033.78	127,227.02
	M 8,611,051.85	2,564,553.73	2,270,995.52	1,767,241.28	2,008,261.32

Extract from Richard Mayer's Capital Account up to December 31, 1917, as Carried on the Books of Reis & Company, Friedrichsfeld

1913				1913			
Oct.	31.	Investment in Kapok Department	M 5000.—	July	1.	Capital Conto as per Inventory	M 206054.02
Dec.	1.	Balance	219708.05	Dec.	1.	Interest of Capital	3863.50
			M 224708.05	"	1.	20% of Net Profit for 5 months	14790.53
							M 224708.05
1914				1914			
May	31.	Balance of Conto Corrent Acct. as per Dec. 1, 1913	M 3578.25	Dec.	1.	Balance carried forward	M 219708.05
1915				1915			
Dec.	31.	Balance of Conto Corrent Account	6994.27	Dec.	22.	$870.35	3578.25
"	31.	20% Share in Herzberg	20000.—				
"	31.	20% share in Algersdorf Kr. 20,000	13400.—				
"	31.	Distribution share of Richard Mayer, back balance with Reis & Co., Friedrichsfeld	51039.18				
"	31.	Herzberg Machinery and Real Estate Account	49987.49				
"	31.	Balance	78287.11				
			M 223286.30				M 223286.30

Extract from Richard Mayer's Capital Account—Continued

1916				1916			
June	9.	Payment Algersdorf Capital Contribution Kr. 32,000.... M	22288.—	Jan.	1.	Balance carried forward..... M	78287.11
"	17.	Capital Contribution Algersdorf Kr. 16,000.....	12000.—	"	1.	Interest	19800.—
Dec.	31.	Balance Private Acct. from Conto Corrent.....	276.50	"	1.	Share of year's profit.....	820584.94
"	31.	Interest	60.—	"	1.	Difference on Interest.....	1300.—
"	31.	Share in Machinery and Real Estate Account, Herzberg...	37029.62	Dec.	31.	Interest for 1916	40549.26
"	31.	M50,000 4½% Treasury Bonds.	47500.—	"	31.	Share of year's profit Algersdorf 1915	618.31
"	31.	M380,000 5% War Loan.....	372400.—	"	31.	Share of year's profit Algersdorf 1916	179509.26
"	31.	Balance	649094.76				
			M1140648.88				M1140648.88

[fol. 76]

1917				1917			
Dec.	31.	Capital Contribution Algersdorf Kr. 60,000..... M	38400.—	Jan.	1.	Balance carried forward..... M	649094.76
"	31.	War Tax.....	266432.40	Aug.	11.	Return of M 50,000 Treasury Bonds	47500.—
"	31.	Herzberg Machinery and Real Estate Account.....	28982.89	"	11.	Return of M 380000 War Loan.	372400.—
"	31.	Transfer to Conto Corrent private account.....	3959.15	Dec.	31.	Share in Algersdorf 1916.....	1105.12
"	31.	Balance	843421.45	"	31.	Interest on Capital.....	29209.50
				"	31.	Share of year's profit 1917....	81886.51
			M1181195.89				M1181195.89

Distributive Shares of the Several Copartners of Reis & Company per November 30, 1913

Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
M 1,235,275.47	M 1,228,451.99	M 401,946.69	M 219,708.05

Distributive Shares of the Several Copartners of Reis & Company per December 31, 1915

	Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co	M 859,197.69	M 826,822.03	M 141,212.19	M 78,287.11
Herzberg	96,232.80	96,232.80	87,484.36	69,987.49
Algersdorf (Franzenthal	30,646.00	30,646.00	27,860.00	22,288.00
Kapok Factory	52,741.64	59,511.34	10,277.72	5,644.45
Total	M 1,038,818.13	M 1,013,212.17	M 266,834.27	M 176,227.05

Book Value of Richard Mayer's Capital Account in Europe per April 6, 1917

The above is ascertained by taking as a basis the balance of December 31, 1916 and adding his proportionate share of profits earned during the entire year of 1917.

Richard Mayer's capital account per December 31, 1916 of the European Assets amounted to.....		M 2,107,499.89

Which corresponds with the figures ascertained by Messrs. Price, Waterhouse, as contained in their report, see page 137.

To the above amount has to be added his proportionate share of earnings covering the period from December 31, 1916 to April 6, 1917.
[fol. 77] Total profits earned in Europe during 1917 amounted to M 909,560.37, as per attached statement and of which amount the sum of M 173,703,703.17 was credited to Richard Mayer as being his share of 1917 earnings.

For 96 days, covering period from Dec. 31, 1916, to April 7, 1917, his share 96/365 of M 173,703.17 amounts to		M 45,686.31
Which added to the amount of his capital account Dec. 31, 1916, totals.....		M 2,153,186.20

From the latter amount the following items have to be deducted:

War profit tax to German Government during 1917 for account of Richard Mayer	M 266,432.40	
Payments made to relatives of Richard Mayer for his account during the years 1917, 1918, 1919, 1920, 1921	50,400.00	
		316,832.40
Leaving the net amount of Richard Mayer's capital account adjusted per April 6, 1917 with		M 1,836,358.80

Kapok Department

Extract from the Books Showing Richard Mayer's Participation in Kapok Department up to End of 1917

1917		1916	
Dec. 31. Transfer to Private account.....	M 3,291.72	July 1. Capital Investment and profits accrued	M 17,417.55
" 31. Balance	40,000.—	Dec. 31. Share of profit and interest.....	10,136.41
		1917	
		July 1. Share of profit and interest.....	10,790.77
		Dec. 31. Share of profit and interest.....	4,946.99
	M 43,291.72		M 43,291.72

[fol. 78] Algersdorf Extract from the Books Showing Richard Mayer's Participation in Algersdorf (Franzenthal) up to End of 1917

1915.		
Dec. 31.	Share in business Capital.....	Kr. 20,000.—
" 31.	Share of Capital Increase.....	12,000.—
1916.		
June 9.	Share of Capital Increase.....	32,000.—
" 17.	Share of Capital Increase.....	16,000.—
Dec. 31.	Share of Capital Increase.....	40,000.—
1917.		
Dec. 31.	Share of Capital Increase.....	60,000.—
		Kr. 180,000.—

Herzberg Extract from the Books Showing Richard Mayer's Participation in Baumwollbleicherei Herzberg up to End of 1917

1915.		
Dec. 31.	Share of Capital Investment.....	M 20,000.—
" 31.	Share of Machinery and Real Estate Acct...	49,987.49
1916.		
Dec. 31.	Share of Machinery and Real Estate Acct...	37,029.62
1917.		
Dec. 31.	Share of Machinery and Real Estate Acct...	28,982.89
" 31.	Share of Machinery and Real Estate Acct...	29,487.48
" 31.	Transfer of part share from Ludwig Reis..	5,500.—
" 31.	Transfer of part loss of Ludwig Reis share..	3,256.91
		M 174,244.39

[fol. 79] Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1917

1917.					
Jan. 26.	Remittances to Messrs. Nagelstock & Kahn.....	M	100	each M	200
Feb. 28.	do.		100	"	200
Mar. 31.	do.		100	"	200
April 30.	do.		100	"	200
May 24.	do.		100	"	200
July 2.	do.		100	"	200
Aug. 4.	do.		100	"	200
Sept. 6.	do.		100	"	200
Sept. 11.	do.		150	"	300
Oct. 8.	do.		250	"	500
Nov. 6.	do.		250	"	500
Dec. 6.	do.		250	"	500
Dec. 29.	do.		250	"	500
		M			3,900

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1918

1918.				
Feb. 4.	Remittances to Messrs. Nagelstock & Kahn.....	M 250	each M	500
Mar. 20.	do.	250	"	500
April 2.	do.	250	"	500
" 29.	do.	250	"	500
May 28.	do.	750	"	1,500
June 29.	do.	500	"	1,000
July 30.	do.	500	"	1,000
Aug. 28.	do.	500	"	1,000
Sept. 27.	do.	500	"	1,000
Oct. 28.	do.	500	"	1,000
Nov. 25.	do.	500	"	1,000
Dec. 27.	do.	500	"	1,000
				M 10,500

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1919

1919.				
Jan. 27.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb. 24.	do.	500	"	1,000
Mar. 27.	do.	500	"	1,000
Apr. 26.	do.	500	"	1,000
May 26.	do.	500	"	1,000
July 1.	do.	500	"	1,000
[fol. 80]				
July 28.	do.	100	each	1,000
Aug. 27.	do.	500	"	1,000
Sept. 26.	do.	500	"	1,000
Oct. 29.	do.	500	"	1,000
Nov. 28.	do.	500	"	1,000
Dec. 24.	do.	500	"	1,000
				M 12,000

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1920

1920.				
Jan. 27.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb. 27.	do.	500	"	1,000
Mar. 29.	do.	500	"	1,000
Apr. 27.	do.	500	"	1,000
May 28.	do.	500	"	1,000
June 22.	do.	500	"	1,000
July 26.	do.	500	"	1,000
Aug. 30.	do.	500	"	1,000
Sept. 24.	do.	500	"	1,000
Oct. 28.	do.	500	"	1,000
Nov. 23.	do.	500	"	1,000
Dec. 21.	do.	500	"	1,000
				M 12,000

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1921

Jan.	25.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb.	23.	do.	500	"	1,000
Mar.	29.	do.	500	"	1,000
Apr.	27.	do.	500	"	1,000
May	30.	do.	500	"	1,000
June	24.	do.	500	"	1,000
July	27.	do.	500	"	1,000
Aug.	31.	do.	500	"	1,000
Sept.	26.	do.	500	"	1,000
Oct.	26.	do.	500	"	1,000
Nov.	28.	do.	500	"	1,000
Dec.	21.	do.	500	"	1,000
					M 12,000

[fol. 81] Recapitulation of Remittances Made for Account of Richard Mayer to His Relatives During 1917-1921

1917	M 3,900
1918	10,500
1919	12,000
1920	12,000
1921	12,000
	M 50,400

Unliquidated Assets

A. Land and Buildings of Reis & Company in Germany

Book Value Dec. 31, 1916.....	M 252,037.66
" " Dec. 31, 1917.....	264,834.66
Actual Value April 6, 1917.....	506,408.-
" " Nov. 1, 1922.....	15,000,000.-
Difference between Book Value Dec. 31, 1916 and Actual Value Nov. 1, 1922	M 14,747,962.34
Credit due Richard Mayer for his share of appreciation 20% of M 14,747,962.34 =.....	M 2,949,592.47

Unliquidated Assets

b. Machinery (Including that of Kapok Factory) of Reis & Company in Germany

Book value	Dec. 31, 1916	Dec. 31, 1917
Machinery	M 35,454.-	M 38,297.-
Kapok Machinery	1.-	1.-
	M 35,455.-	M 37,298.-

Actual Value April 6, 1917.....	M 128,620.-
Actual Value Nov. 1, 1922.....	M 12,000,000.-
Difference between Book Value Dec. 31, 1916 and Actual Value Nov. 1, 1922.....	M 11,964,545.-
Credit due Richard Mayer for his share of appreciation 20% of M 11,964,545.- =.....	M 2,392,909.-

[fol. 82] Statement of Richard Mayer's Share in European Assets as per November 1, 1922, by Taking Into Consideration the Dissolution of Partnership as of April 6, 1917

Book Value April 6, 1917		M 1,836,353.80
Difference between Book Value of December 31, 1916 and Actual Value of November 1, 1922 as per attached statement:		
Land and Buildings	M 2,949,592.47	
Machinery including the Machinery of Kapok factory.	2,392,909.00	
		M 5,342,501.47
Difference between Book Value of December 31, 1916 and date of sale:		
Herzberg Plant	M 149,734.95	
Algersdorf (Franzenthal) Plant	78,000.00	
		227,734.95
		M 7,406,590.22

In United States District Court

Minute Entries

This cause was thence continued to the December Term, A. D. 1922, when, to wit, March 14, 1923, a motion was filed by the plaintiff to strike out certain portions of the answer of Richard Mayer, Richard Mayer Company and the Anglo-American Cotton Company.

This cause was thence continued to the March Term, A. D. 1923, when, to wit, March 26, 1923, it was ordered by the court that the first paragraph of defendant Mayer's answer be stricken out.

This cause was thereupon set down for hearing and fully heard by the court on the twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and thirty-first days of March, A. D. 1923, the Honorable Charles F. Johnson, Circuit Judge, duly assigned to hold said District Court, sitting.

After due deliberation thereon had, to wit, June 16, 1923, an opinion of the court was announced.

This cause was thence continued from term to term to the present [fol. 83] September Term, A. D. 1923, when, to wit, October 2, 1923, the following Final Decree for distribution of funds is entered:

IN UNITED STATES DISTRICT COURT

FINAL DECREE—October 2, 1923

JOHNSON, J.:

This cause came on to be heard for the entry of a final decree on October 2, 1923, and was argued by counsel, and thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed that:

First. The defendant, Richard Mayer, shall forthwith convey to Edwin Reis, Karl B. Strauss and Anny Reis, individually and as trustee for the minor children of Ludwig Reis, all Richard Mayer's rights, title and interest in and to all those assets now or formerly of the partnership of Reis & Company which are located in Germany whether said assets are real estate or personal property. Upon the execution of said conveyance, the defendants, Edwin Reis, Karl B. Strauss and Anny Reis, individually and as trustees for the minor children of Ludwig Reis, shall execute to the said Richard Mayer a release from all claims, demands, causes of action together with a covenant to hold said Richard Mayer harmless from all liability on account of any liabilities of the Manchester branch of said partnership of Reis & Company and shall also execute to the defendant, Richard Mayer, a corresponding conveyance of all their right, title and interest in and to the assets now or formerly of said partnership in the United States whether the same are real estate or personal property except for such interest as they or any of them may have in the sum or sums ordered to be turned over to the Alien Property Custodian under this decree. Upon the execution of such conveyance, the defendant, Richard Mayer, shall execute a release to the German partners from all claims, demands and causes of action.

Second. The defendant, Richard Mayer, shall forthwith pay into the hands of Edward F. McClennen, as an officer of this court, the sum of fourteen thousand dollars ($14,000) as security to satisfy 20 per cent of any judgment that may be recovered in the suits at law [fol. 84] brought by the United States of America against the Richard Mayer Company and against Richard Mayer et als. individually to recover the amount of $62,595.03 paid by the War Risk Insurance Bureau in consequence of the loss of cargo of the steamship Carolyn with interest from October 17, 1916. Any recovery in this case should be paid, 20 per cent by Richard Mayer and 80 per cent by the Alien Property Custodian. If the United States should not prevail in its contention the whole of said sum of fourteen thousand dollars ($14,000) shall be distributed to Richard Mayer, or if any surplus remains after judgment recovered by the government shall have been satisfied, the same shall be distributed to Richard Mayer. The plaintiff, the Alien Property Custodian, is hereby directed to pay 80 per cent of any judgment that may be recovered by the United States in either of said cases, such payment to be made out of the funds turned over to him as the distributive share of the enemy partners, under this decree.

Third. The defendant, Richard Mayer, shall pay forthwith the sum of $157,299.49 to the plaintiff, the Alien Property Custodian, to be held by him as enemy property under the provisions of the Trading with the Enemy Act. This sum represents the surplus after deducting the value of Richard Mayer's interest in the partnership funds from the sum of $828,072.72 for which Mayer is accountable, or $162,899.49, less $5,600, or 80 per cent of the amount of $7,000 heretofore deposited with Edward F. McClennen, as an officer of said court, for the purpose of paying any judgment that may be recovered by Julius Laible in his pending suit to recover an item of interest claimed to be due him from the firm of Reis & Company. Any surplus of said sum which may remain unused after the satisfaction of such final judgment as may be recovered by said Laible shall be distributed 80 per cent to the plaintiff and 20 per cent to the defendant, Richard Mayer.

Fourth. The credits claimed by Richard Mayer for reimbursement of the sums paid by him as premium on a bond to the Alien Property Custodian for counsel fees and other disbursements in [fol. 85] connection with his former suit against the Alien Property Custodian are respectively disallowed.

Fifth. The plaintiff as Alien Property Custodian is entitled out of the money and property in controversy in this cause to the allowance of reasonable fees and expenses for the services herein rendered by Elias Field, Esquire, who appeared as his counsel in this behalf; that the sum of ten thousand dollars is found to be a reasonable allowance for said Elias Field to cover his services in this behalf; and he is authorized to pay said sum out of the funds turned over to him by the defendant Mayer under the terms of this decree.

By the Court.

John E. Gilman, Jr., Deputy Clerk.

C. F. J.

No objection as to form. Edward F. McClennen, Attorney for Richard Mayer.

IN UNITED STATES DISTRICT COURT

NOTE OF APPEAL

From the foregoing final decree, the plaintiff, Thomas W. Miller, and defendant, Richard Mayer, and defendants, Edwin Reis, Karl B. Strauss and Anny Reis, claim an appeal to the United States Circuit Court of Appeals for the First Circuit, and good and sufficient security that they will prosecute their appeal to effect and answer all costs if they fail to make their appeal good having been given by defendants, said cross appeals are allowed accordingly.

IN UNITED STATES DISTRICT COURT

OPINION—June 16, 1923

JOHNSON, Circuit Judge:

In Mayer v. Garvan, Alien Property Custodian et al., 278 Fed. 27, the Circuit Court of Appeals in this circuit affirmed the decree of the District Court in that case and held:

"That the complainant on the dissolution of the partnership with the outbreak of war had a lien on the American assets and their proceeds for what was due him from the partnership on an account- [fol. 86] ing of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting.

"That the plaintiff is entitled to the immediate repossession of all property so seized and the net proceeds arising therefrom; that the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of section 8(a) of the Trading with the Enemy Act, and of the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

Richard Mayer became a member of the firm of Reis & Company in 1913, two members of which, Edwin Reis and Ludwig Reis, were residents of Germany, and one Karl B. Strauss, a naturalized citizen of Great Britain. The substance of the partnership articles is set forth in Mayer v. Garvan, supra; and the contributions of capital stock made by each of the partners and the participation in profits to which each was entitled are stated and need not be repeated here.

The court there held that the partnership was dissolved by the declaration of war between the United States and Germany April 6, 1917, and that after that date all trading or commercial intercourse between American and German partners was unlawful and opposed to the public policy of the United States. It was also held that an agreement alleged to have been entered into February 7, 1917, by the partners in Germany and one Karl Mayer, who purported to act as legal absence trustee for Richard Mayer, and which distributed the firm assets, in the event of war between the United States and Germany, was void.

In accordance with the decree Richard Mayer submitted a statement of an account of partnership affairs as of April 6, 1917, and his distributive share in the same. This was rejected by the Alien Property Custodian, who has brought this bill in equity to determine Mayer's distributive share of all the firm assets.

Edwin Reis and Karl B. Strauss were made parties defendant and also Anny Reis in her own right as widow of Ludwig Reis and as trustee of her minor children. Two corporations which were capi- [fol. 87] talized by Richard Mayer from the assets of Reis & Company were also made parties defendant; but, as they were business instrumentalities of the firm, their assets and liabilities, for the purposes of this accounting, may be considered those of the firm. Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and

as trustee of her minor children, have appeared and filed an answer to the bill, in which they have rendered an account of the European assets of Reis & Company in their possession and subject to the control of the partnership on April 6, 1917, and at the date of the hearing; *and Edwin Reis has testified at length in regard to the same.*

In accordance with the decree in Mayer v. Garvan, supra, the Alien Property Custodian has returned to the defendant Mayer partnership assets of the value of $828,072.72, and he admits himself to be chargeable with this amount. He also admits that the value of the partnership property in his hands on April 6, 1917, was $910,014.07. The value of these assets the Alien Property Custodian claims should be increased by the amount of $633.34, appreciation of a City of Fitchburg note and of other securities, all of which amount to $966.06.

Mr. Edwin Reis brought with him from Germany all the books of the partnership, including books which were withheld from Price, Waterhouse & Company, accountants, who in September, 1920, went to Germany under a decree of the District Court in the former case to state an account between the partners; but upon whose report the District Court then found it could not state an account. The account now rendered by the German partners which states the distributive share of Mayer on December 31, 1916, when the last trial balance was taken before the war, does not differ from that reported by the accountants. The book values given in this trial balance it is admitted represent the actual value of all the property of the partnership except that of the land and buildings and machinery in the Friedrichsfeld plant, which exceeded the book value by M 347,535.34. Among the liabilities stated in this trial balance, however, is the sum of M 956,814.31 set aside for reserves to meet loss on accounts and to assist needy or unfortunate [fol. 88] employees and losses that might be incurred in the transition from war to peace. Mr. Edwin Reis in his testimony claimed that these reserves were completely exhausted in the years 1918, 1919 and 1920; but there is no testimony to show how much of this amount was paid out before April 6, 1917, and I therefore do not include among the liabilities, to the payment of which Mayer's share should contribute, the amount set aside for reserves.

Mayer's interest in the German assets as shown by the books on December 31, 1916, was, in accordance with the report of the accountants and the answer of the German partners, M 2,107,499.89. To this should be added M 69,507.06, 20 per cent of the actual value of land and buildings and machinery over book values; 20 per cent of the reserves, M 191,362.86; and Mayer's share of profits from December 31, 1916 to April 6, 1917, admitted to be M 45,686.31. With these additions I find Mayer's share of net assets in Germany April 6, 1917 to be M 2,414,056.12.

After the declaration of war, which terminated the partnership, there could be no communication between the partners; and whether the German partners held Mayer's share of the European assets as trustees or liquidating partners or whether they went on with

the business as a going business in Germany, using his share of the assets and expecting to account with him at the close of the war as a partner, is immaterial.

The court has found that, according to the German law, the partnership was not dissolved; but by American law it was, and all communication between the German partners and American partners thereafter was illegal. The German partners could not know the exact amount of Mayer's share in all the firm assets because they had had no reports from the Boston branch since the latter part of 1914 or the early part of 1915.

They had sent over to Mayer about $2,500,000 to use in the purchase of cotton waste and an attempt had been made by the American partners to get this into Germany, which had led to seizures of several cargoes by the British Government. Some of this money had been returned to the German partners; but the evidence dis- [fol. 89] closes that between $500,000 and $600,000 was left in the hands of Richard Mayer on April 6, 1917, and had been invested by him in the securities which were seized by the Alien Property Custodian. It does not appear, however, that the German partners had any reliable information upon which they could determine, on April 6, 1917, the distributive share of Richard Mayer in the firm assets. All the firm assets in the United States were seized by the Alien Property Custodian in May and September, 1918, and by decree of the court were returned to Mayer in June, 1922, to satisfy his distributive share upon a partnership accounting.

The courts of the former belligerant countries are now open to the citizens of each and the German partners have submitted themselves to the jurisdiction of this court.

The important questions which lie at the very threshold of determination of the interest of Richard Mayer are: At what date shall the accounting be had? What is the interest of Richard Mayer in all the firm assets and how should it be measured? Should it be measured in the fluctuating currency of Germany, according to the rate of exchange between Germany and the United States at the time of the accounting or at the time when the partnership was dissolved by the declaration of war on April 6, 1917; or should all the property, both American and European, be measured by the same yard stick by taking the intrinsic value in gold of the mark and the dollar?

It is a matter of general knowledge that, as a result of the outcome of the war and economic conditions existing in Germany and the issue of huge volume of paper marks which do not rest upon any gold standard, there has been a tremendous shrinkage in the value of the German mark as expressed in the United States monetary unit of value. Upon March 30, 1917, the nearest date to April 6, 1917, when the rate of exchange was quoted, the value of the German mark in the currency of the United States was about 18 cents. After the declaration of war there was of course no rate of exchange between the United States and Germany and none was quoted until some time in 1919, when the first quotation of the value of the Ger- [fol. 90] man mark in the currency of the United States was 7⅞

cents. Upon July 2, 1921, when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents; and at the time of the beginning of the hearing before me, March 28, 1923, its value was .0048 of a cent, and it is well known that since that time the rate of exchange has further declined. There is no evidence to show the domestic value of the German mark nor whether the decline in the rate of exchange, as shown in this country, correctly expresses the decline in its value in Germany.

From the share of Mayer in the European assets on April 6, 1917, which I find to be M 2,414,056.12, I find there should be deducted the sum of M 266,432.40, the amount paid by the German partners to the Imperial German Government for taxes assessed on Mayer's partnership interest during the years 1914, 1915 and 1916, and paid by the German partners after April 6, 1917.

I also find there should be deducted the sum of M 50,400, paid by the direction of Mayer to his relatives in Germany. While only a small part of this latter amount was paid to relatives before April 6, 1917, yet, as trustees holding Mayer's interest, I find that they were authorized by him to make these payments. Deducting these two amounts I find Mayer's share of the European assets, on April 6, 1917, to be M 2,097,223.72.

In Stevenson & Sons, Ltd. v. Aktiengesellschaft (1918), A. C. 239, where the partners were English and German and the partnership property was in England and the partnership business was carried on after the declaration of war by the English partner, it was held that the German partner was entitled to his share of the profits attributable to the use of his share of the parntership property as distinguished from that attributable to the skill and industry of the English partner, or interest upon the value of his share from the time of dissolution of the partnership.

It was held in Brown v. Hiatts, 15 Wall. 177, that interest did not run during the war on a debt owning to an enemy, quoting with approval the decision of the Supreme Court of Pennsylvania in Hoare v. Allen, 2 Dallas 102.

[fol. 91] The German partners could not determine the distributive share of Mayer in the firm assets and if they had been able to do so they could not pay any part of his share to him while a state of war continued between Germany and the United States. They are not, therefore, liable for payment of interest upon his distributive share. To assign to his distributive share now his portion of the profits of the business conducted in Germany after the outbreak of the war would be a most difficult task, even if the German partners carried on the business as a going concern, and as now claimed by them, considered Richard Mayer as a partner, although the evidence shows that, without consulting him, they sold all the property belonging to two of the branches conducted by the firm in Germany and they also admitted a new member to the firm.

It would be impossible to calculate the share of the profits which should be equitably assigned to Mayer's share in the German assets or what part of them was attributable to the skill and attention of

the German partners; and under the United States rule the German partners were not liable to pay him interest. Nor does he account for the income from the investments which had been made and which he had collected before the securities were seized by the Alien Property Custodian. The sum which has now been returned to him by the Alien Property Custodian includes income earned while in the custodian's hands, in which both he and his partners share upon distribution.

The firm had a branch in Manchester, England, also; and the evidence discloses that the liabilities of this branch far exceed its assets. But the German partners have stated their willingness to exclude the affairs of the Manchester branch from the accounting and do not make any claims upon Mayer on account of any losses sustained by the firm through that branch.

I therefore find that, for the purposes of this accounting, no part of the profits made by the firm in Germany after the outbreak of the war should be added to Mayer's distributive share. I find that the German partners should account as of April 6, 1917, for Mayer's share at M 2,097,223.72.

[fol. 92] It is agreed that Mayer is accountable for $828,072.72, the amount returned to him by the Alien Property Custodian, the amount which was seized by the Alien Property Custodian having been decreased by certain payments made by the consent of all the parties and also by a depreciation in the value of the stock of the Anglo-American Cotton Company; so that the shares of stock in that corporation, which was seized by the Alien Property Custodian, became worthless because of the great slump in the cotton market and without any fault of the Alien Property Custodian or any other party. It seems to me that it would be impossible and entirely profitless to attempt to trace the liability for any depreciation in the American assets to the fault of any party; and I find, for the purposes of this accounting, that the sum of $828,072.72 represents the value of the American assets for which Richard Mayer should account, and that his share of these assets is 20 per cent or $165,614.54. To this should be added his interest in the European assets which has been stated in marks. The decree in this case must be in terms of American dollars. The American assets are measured in terms of the American gold dollar containing gold of a standard weight and fineness. The German assets should be measured by the same yard stick; that is, by the gold mark, which is equivalent to .2382 of a cent of the money of the United States, both based upon a gold standard.

Counsel have cited in argument cases to show that the rate of exchange between two countries at the time of the breach of the contract is the rule adopted in English courts when judgment is to be rendered there for a debt payable in another country; and have also cited American authorities which hold that the rate of exchange at the time of the trial or of the judgment should govern. There are, however, respectable authorities in the United States which hold that in an action for money due and payable in a foreign country, the rate of exchange should not be taken

into consideration in computing the sum due in American money; but that the par of exchange should govern.

Adams v. Cordis, 8 Pick. 260.

[fol. 93] Alcock v. Hopkins, 6 Cush. 484.

Lodge v. Spooner, 8 Gray 166.

Commonwealth v. Haupt, 10 Allen 38.

Burgess v. Alliance Ins. Co., 10 Allen 221.

Swanson v. Cooke, 45 Barb. 387.

Rice v. Ontario S. B. Co., 56 Barb. 387.

Martin v. Franklin, 4 Johns. 124.

Skofield v. Day, 20 Johns. 102.

Hussey v. Farlow, 9 Allen 263.

Reiser v. Parker, 1 Lowell 262.

Translating the distributive share of Richard Mayer into European assets, M 2,097,223.72 into dollars at .2382 to the mark would make $499,558.69. To this should be added 20 per cent of the American assets for which he is now accountable, $165,614.54, making the value of his distributive share in all the assets of the firm $665,173.23. Deducting this total from $828,072.72 leaves $162,899.49, which I find to be the surplus to be returned by Richard Mayer to the Alien Property Custodian to be held by him as enemy property under the terms of the Trading with the Enemy Act.

The plant in Friedrichfeld has not been sold, but the parties have all agreed that its actual value, as testified to by Mr. Reis and corroborated by the German expert produced at the trial, shall be taken to be true for the purposes of this accounting. The claim of Laible for interest, amounts to $6,475.28, and to meet this $7,000 has been deposited with Mr. McClennen as an officer of the court. Eighty per cent of this amount should be deducted from the share of firm assets to be returned to the Alien Property Custodian and twenty per cent from the distributive share of Richard Mayer. If all or any part of said sum is not required to satisfy the judgment which Laible may recover, then the whole or any unexpended balance is to be paid, eighty per cent to the Alien Property Custodian and twenty per cent to Mayer. There also remains in dispute the claim of the United States for the amount paid by the War Risk Insurance Bureau on account of loss of cargo on the "Carolyn," amounting to $62,595.03, [fol. 94] with interest from October 17, 1916, and claims of Ely, Leiser, Sanft and Heinstein for percentages of profits of the firm. These percentages of profits, so far as they have been earned by German assets, have been paid. The German partners contend that all the American assets or profits are within the meaning of the bonus sharing contracts with these parties. This is denied by defendant Richard Mayer. No demand for any percentage of these profits has been made by these parties upon the American partner, nor upon the Alien Property Custodian, and no action could be maintained by any of them against the Alien Property Custodian, for it is only one who is not an enemy nor ally of an enemy who is authorized to present a claim to assets seized by the enemy Property Custodian. It would be impossible to determine what proportion of the American assets were

profits under the evidence which has been presented, and as no suit can be brought against the Alien Property Custodian by the claimants on that account, I disregard these claims.

Without passing upon the merits of the Government's claim in the "Carolyn" case, I find that, as the cotton which was the subject of the loss in that case was purchased with the partnership funds of Reis & Company, upon its face the claim seems to have enough merit to authorize a decree that $70,000 be impounded with the clerk of the United States District Court to satisfy any judgment that may be obtained by the United States on account of this claim; and that of this amount 20 per cent be taken from the distributive share of Richard Mayer and 80 per cent from that which is to be returned to the Alien Property Custodian; and that, if the United States should not prevail in its contention the whole of said sum shall be distributed to Richard Mayer and to the Alien Property Custodian in proportion to the sums which they have furnished; or, if any surplus remains after judgment recovered by the Government shall have been satisfied, the same shall be distributed to Richard Mayer and the Alien Property Custodian in the same proportion.

The decree should also contain a provision that Richard Mayer shall convey to the German partners all his right, title and interest [fol. 95] in and to all of the assets of the firm in Germany, whether the same are real estate or personal property. The claim of Richard Mayer for interest upon his distributive share is disallowed, as well as his claim for depreciation of the assets while in the hands of the Alien Property Custodian and which was caused largely by the total loss of the value of the stock of the Anglo-American Company. Interest upon the partner's distributive share cannot be allowed until it has been determined. Not only because the distributive share of Mayer had not been determined, but because, after the outbreak of the war payment to him would have been illegal, I find the German partners are not liable for payment of interest on Mayer's distributive share. There is no provision of the Trading with the Enemy Act which would make the Alien Property Custodian liable for payment of interest while the property was in his possession and he has returned it to Mayer with the addition of all income that has been received by him.

Let a decree be presented in accordance with this opinion.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF PLAINTIFF, THOMAS W. MILLER—Filed January 23, 1924

The plaintiff Thomas W. Miller, as Alien Property Custodian, being aggrieved by the final decree entered in the above entitled cause on or about the second day of October, 1923, now appears and appeals from said decree to the Circuit Court of Appeals.

The particulars in which the plaintiff considers decree erroneous

are set forth in the assignments of error herewith filed, reference thereto being hereby made.

The plaintiff further prays that a transcript of the record, proceedings, papers and evidence upon which the said decree was based, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

[fol. 96] This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge, Sitting in said District Court.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR OF PLAINTIFF, THOMAS W. MILLER—Filed January 23, 1924

The plaintiff Thomas W. Miller, as Alien Property Custodian, assigns as the errors in the proceedings and in the final decree entered on or about October 2, 1923, in the above entitled cause, on which errors the said plaintiff-appellant will rely in the prosecution of his appeal from said decree, that the court erred in the following respects:

First. In holding and ruling that Richard Mayer's distributive share in the European assets of the partnership of Reis & Company, which the court found to be 2,097,223.72 marks should be translated into American dollars for the purposes of said decree at the rate of $.2382.

Second. In holding and ruling that Richard Mayer is entitled on accounting to be paid the sum of $499,558.69 as his distributive share in the European assets of the partnership of Reis & Company.

Third. In holding and ruling that the surplus, after deducting the value of Richard Mayer's interest from partnership funds for which he is accountable, is not more than $162,899.49.

Fourth. In failing to find and hold that the surplus to be returned by Richard Mayer to the Alien Property Custodian is not at least $661,584.26.

Fifth. In failing to hold and rule that the present accounting must be stated upon the basis of the present value of the partnership assets or their proceeds, except as to losses due to the fault or neglect of individual partners.

Sixth. In failing to hold and rule that no fault or neglect on the part of individual partners caused the depreciation in the value of the European assets of the partnership since dissolution.

[fol. 97] Seventh. In failing to hold and rule that the European assets of the partnership have depreciated in value because of the depreciation in the value of German currency.

Eighth. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting is stated in this proceeding.

Ninth. In failing to hold and rule that the liability of marks 956,814.31 shown on the balance sheet of the partnership on December 31, 1916, for reserves should be included among the liabilities to the payment of which Richard Mayer's share should contribute.

Tenth. In holding and ruling that the defendant Richard Mayer is accountable only for the sum of $828,072.72.

Eleventh. In holding and ruling that it is agreed that Richard Mayer is accountable for only $828,072.72.

Twelfth. In holding and ruling that there is no evidence to show the domestic value of the German mark.

Thirteenth. In failing to hold and rule that the term marks as used in the accounting of the partnership assets in Germany referred to current legal tender paper marks as distinguished from gold marks.

Thomas W. Miller, Alien Property Custodian, by his Solicitor,
Elias Field, Special Assistant to the Attorney General.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF DEFENDANT RICHARD MAYER—Filed January 23, 1924

Richard Mayer, the defendant, alleging himself to be aggrieved by portions of the final decree entered in the above entitled cause on or about the second day of October, 1923, does hereby appeal to the [fol. 98] Circuit Court of Appeals of the United States for the First Circuit from said decree in respect to said portions as more fully appears in the assignment of errors which is filed herewith, and prays that this claim of appeal may be allowed and that a transcript of the record, proceedings and papers upon which the said decree was based, duly authenticated, may be sent to said Circuit Court of Appeals.

Richard Mayer, by His Attorney, Edward F. McClennen.

This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge, Sitting in said District Court.

In United States District Court

Assignments of Error of Defendant Richard Mayer—Filed January 23, 1924

Richard Mayer, the defendant-appellant, assigns as the errors in the proceedings and in the final decree entered in October, 1923, in the above entitled cause, on which errors he the said defendant-appellant will rely in the prosecution of his appeal from said decree, that:

First. The claim of Richard Mayer for reimbursement of the $4,000 paid by him as a premium on a bond to the Alien Property Custodian, given in order to obtain performance by the Alien Property Custodian of the decree of May 4, 1922, in Mayer v. Garvan, should not have been disallowed.

Second. The claim of Richard Mayer for reimbursement of the sums paid by him for counsel fees and other disbursements in prosecuting the claims and the suit of Mayer v. Garvan to recover possession of the property taken by the Alien Property Custodian without justification, should not have been disallowed.

Third. Richard Mayer should not have been held chargeable in a partnership accounting for sums paid by his German former partners after the outbreak of war April 6, 1917, on account of [fols. 99 & 100] personal taxes claimed by the German government against an American citizen, without opportunity for him to question or to resist such payments.

Fourth. Richard Mayer should not have been charged in a partnership accounting for payments to his relatives by his German former partners after the outbreak of war April 6, 1917, when at the same time he was not allowed in such accounting for payments made by him to relatives in the United States of his German former partners.

Fifth. Richard Mayer should have been allowed interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918, claiming it as the property of Mayer's German former partners, and until its return in 1922.

Sixth. It should not have been adjudged by the decree that the surplus for which Richard Mayer was accountable was $157,299.49 and, in addition, 80 per cent of the fund deposited in the hands of Edward F. McClennen as security in the case of Laible, or that said sums or either of them should be paid over to the Alien Property Custodian.

Seventh. Richard Mayer should not have been required to pay over anything to the Alien Property Custodian.

Richard Mayer, by His Attorney, Edward F. McClennen.

DEFENDANT RICHARD MAYER'S BOND ON APPEAL FOR $250—Approved and filed Jan. 23, 1925; omitted in printing

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[fol. 101] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF DEFENDANTS EDWIN REIS ET AL.—Filed January 23, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, being aggrieved by the final decree entered in the above entitled cause on or about the second day of October, 1923, now appear and appeal from said decree to the Circuit Court of Appeals.

The particulars in which the said defendants consider said decree erroneous are set forth in the assignments of error herewith filed, reference thereto being hereby made.

The said defendants further pray that a transcript of the record, proceeding, papers and evidence upon which the said decree was based, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children Edwin Reis, Karl B. Strauss, by their Attorney, Clifford P. Warren.

This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge Sitting in said District Court.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERROR OF DEFENDANTS EDWIN REIS ET AL.—Filed January 23, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children in connection with their petition for appeal from the final decree entered in the above entitled case on or about the second day of October, 1923, jointly and severally present the [fol. 102] following assignments of error upon which they will rely in said appeal.

The court erred:

1. In holding and ruling that the defendant Richard Mayer is accountable for the sum of only $828,072.72.

2. In holding and ruling that it is agreed that the defendant Richard Mayer is accountable for only $828.072.72.

3. In failing to hold and rule that the defendant Richard Mayer is accountable for the sum of $910,980.13.

4. In holding and ruling that Richard Mayer's distributive share in the European assets of Reis & Company is 2,097,223.72 marks.

5. In holding and ruling that the sum of M 956,814.31 set aside by the defendants above named for reserves should not be included among the liabilities to the payment of which the defendant Richard Mayer's share should contribute.

6. In holding and ruling that the defendant Richard Mayer's share in the European assets of the partnership of Reis & Company should be converted into American dollars at the rate of $.2382.

7. In failing to hold and rule that the term "mark" as used by the German partners in the accounting of the partnership assets in Germany and as used by the witness Edwin Reis in his testimony at the trial refers to the current paper mark as distinguished from the gold mark.

8. In holding and ruling that the marks in question in this case had any intrinsic value in gold at any time after the passage of the German legal tender acts.

9. In holding and ruling that the intrinsic value in gold of the marks in which the defendant Richard Mayer's interest in the European assets has been stated in this accounting is $.2382.

10. In holding and ruling that the German assets should be measured by the gold mark.

11. In failing to hold and rule that the present accounting must be stated upon the basis of the present values of all partnership [fols. 103 & 104] assets or their proceeds, except as to the losses due to the fault or neglect of individuals partners.

12. In failing to hold and rule that the defendant Richard Mayer's distributive share in the European assets of the partnership of Reis & Company should be converted into American dollars for the purposes of said decree at the rate of exchange prevailing at the time said decree was entered.

13. In holding and ruling that the cases cited in the opinion of the trial court with reference to the par of exchange in actions for money due and payable in a foreign country are applicable to an action for accounting.

14. In failing to hold and rule that the claims of Eli Leiser Sanft and Heinstein for percentages of profits of the firm constitute a contingent liability of the co-partners and in failing to make provisions in this decree for the payment of these liabilities.

Edwin Reis, Karl B. Strauss, Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children. Clifford P Warren, Attorney.

DEFENDANT'S EDWIN REIS ET AL. BOND ON APPEAL FOR $250.00—Approved and filed Feb. 14, 1924; omitted in printing

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[fol. 105] IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed February 18, 1924; Approved February 19, 1924

AGREED FACTS

The following is a condensed statement of the evidence, omitting all parts not essential to the decision of the questions presented by the appeal:

[7, 21] The court took judicial notice of the printed record in the Circuit Court of Appeals in the case of Mayer v. Garvan, together with the final decree entered May 4, 1922, pursuant to the mandate.

[26] The accountant's report on the books of defendant Richard Mayer showed that his balance of net assets in America which went into the partnership of Reis & Company, June 30, 1913, was $49,060.48.

[34] Subject to the objection and exception of the plaintiff, evidence was admitted that after the entry of the decree after mandate instead of the Alien Property Custodian pressing an appeal to the Supreme Court of the United States, an arrangement was [fol. 106] made whereby if the property was turned back and decree made final that Mr. Mayer would give a surety company bond for $400,000 conditioned to perform any such decree as may be entered in this case, with the stipulation in the bond that the amount should not be taken as indicative of the claim of either party; that is the government was entitled to claim that the liability was more than $400,000 and the sum in the bond was not to be taken as any demand by Mr. Mayer that it was any such amount. The bond contained no stipulation as to who should pay the premium on the bond. Mayer paid $4,000 as the premium.

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[36] W. T. HYNES, called as a witness by the defendants Edwin Reis et al., testified that he was employed in the foreign exchange department of the National Shawmut Bank and that he had with him the records showing the rate of exchange at various times showing the value of German marks [37] in American dollars. That on April 6th, 1917, there was [38] no quotation of German marks. That on the date of trial, March 26th, 1923, marks were worth $48 per million.

[401] Recalled as a witness for the plaintiff, Mr. Hynes testified that the first quotation of German marks after April 6th, 1917, was on July 17th, 1919, when the quotation was 7⅞ cents per

mark and that that was the first quotation between the United States and Germany in marks after the outbreak of war of which the Shawmut Bank had cognizance. That on July 2nd, 1921, the rate fluctuated between 1.34½ cents per mark and 1.35½ cents per mark and that the rate closed at 1.35¼ cents per mark. That on May 4th, 1922, the date of the decree for the accounting, the rates fluctuated between [402] 34½ cents and 34⅞ cents per one hundred marks, or 34⅞ one-hundredths of a cent per mark. On March 30th, 1923, the fifth day of the trial, the rate was $46.50 per million.

On cross-examination by counsel for defendant Mayer, the witness was asked the following questions:

X Q. 1. Do you know what a German mark is?
A. I think so.
X Q. 2. It is the monetary unit of the German Empire equiva-[fol. 107] lent of 23.08 United States cents, is it not?
A. Its gold value is equivalent to that.

This evidence was admitted subject to the objection of the plaintiff that it was immaterial to the issues [404] in the case. The plaintiff excepted to the admission.

On redirect examination, the witness testified that the last quotation of the value of marks before April 6th, 1917, was on March 29th, or March 30th, 1917, when marks were quoted at 71½ cents for four marks, or roughly 18 cents per mark.

[40] Counsel for the government stated that it was the government's theory that for the purpose of this accounting the present value of all assets should be taken. It was stated by the government that if the value of the assets goes back to the date of the dissolution, the defendant Richard Mayer's answer admits assets in his possession amounting at that time to $910,000, but on the basis of the court ultimately accepting the government's theory, it was content to raise no question as to the sum of $828,000, representing the present value of the assets in Richard Mayer's possession.

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[41] The defendant Edwin Reis, called as witness on behalf of the European defendants, testified that he lived in Heidelberg, Germany, was a member of the firm of Reis & Company; that the other members in April 1917, were Ludwig [42] Reis, Karl Strauss and Richard Mayer. That Ludwig Reis [43] died on January 10th, 1918; that Richard Mayer was employed by the witness as a confidential clerk from 1898 or [44] 1899 on and that he became a partner in the business in 1913 and brought into the firm in the way of assets about [45] 206,000 marks, consisting of merchandise and accounts receivable.

[46] That the only place where the capital investment of the partners was shown on the books was on the private ledger in

Friedrichsfeld; that the branch officers kept records for their own convenience. The records of all the branch offices went together only at Friedrichsfeld, that is to say, the capital amount at Friedrichsfeld and the branch offices was shown only on the books in Friedrichsfeld whereas the branch offices kept books only on their [fol. 108] own [47] account. Inventories were made up from reports sent by the branch offices to Friedrichsfeld and the balance sheets at Friedrichsfeld included the inventories at Friedrichsfeld, Boston and Manchester.

The Richard Mayer Company and the Anglo-American Cotton Company were formed in the office of Reis & Company at Friedrichsfeld. [49] That the Richard Mayer Company and the Anglo-American Cotton Company were founded out of the funds of Reis & Company.

[56] Exhibits A, B and C as attached to the answer of the defendants Edwin Reis et als. were admitted in evidence as "Exhibit I."

Describing the Manchester branch of the business, Mr. Reis testified that the Manchester branch did business in the same way as the Boston office, namely, as a buying and selling agency. After the outbreak of the war with England, the property in Manchester was seized by the English Alien Property Custodian and was sold. The firm obtained nothing out of the assets in England. These assets consisted at the time of the outbreak of the war with England of a plant and some outstanding accounts aggregating about 4,500 pounds in value. On the other hand there were very large debts from the English branch office to [57] English banks for which the Friedrichsfeld office had to stand good. To take care of this indebtness, the firm made a reserve in its books at Friedrichsfeld of about 700,000 to 800,000 marks, but had to pay much more than that. Up to the date of the trial they had paid over 900,000 marks to the clearing office according to the terms of the Treaty of Versailles. Much more remains [58] to be paid. The liabilities of the Manchester branch were carried on the books at Friedrichsfeld, the same as the liabilities of the Boston branch. After the outbreak of the war with England, they did not know any longer how they were standing, but had information from England that the liabilities amounted to about 35,000 pounds in excess of the assets. The accounting had with the English trustee under the terms of the Treaty of Versailles was only a temporary accounting.

[fol. 109] [81] The witness brought over all the books of the partnership up to the year 1918, including the books that were withheld from Price, Waterhouse Co. He also brought over the secret partnership books showing the interest of the several partners, which were not shown to Price, Waterhouse Co. That on April 6th, 1917, the assets of Reis & Company consisted generally of merchandise, cash on hand, cash receivable, and further, a plant in Herzberg, a plant [82] in Franzenthal and a plant in Friedrichsfeld. That the merchandise and accounts receivable were all turned into cash in the year 1917 and that the amount realized from this merchandise and accounts receivable appears on page 1 of Defendant's Exhibit I.

That the plant in Herzberg which was carried on the books at 511,-000 marks was sold during the year 1919 for the sum of 1,260,000 marks. That was the best price they could get at that time. That the plant in Franzenthal, which was carried on the books at 360,-000 marks was sold in the early part of 1920 for [83] 750,000 marks. That the plant in Friedrichsfeld has not been sold, but that it was carried on the firm books on April 6th, 1917, for about 280,-000 marks. That the value of it on the date of trial (March 27th, 1923) was about [85] 18,000,000 marks. That the increase in the value of the Friedrichsfeld plant since April 6th, 1917, comes from the depreciation of the mark.

[87] In stating the value of the respective partners' interest in the account, the witness did not take in the good will of the business because at the outbreak of the war with the United States of America there really was no good will left any more. Business in Germany had nearly come to a standstill and the firm's foreign connections were gone so witness was sure there was no good will to account for.

That the firm of Reis & Company had no fixed arrangement [88] about figuring marks into dollars or dollars into marks. The witness went over the books again two days ago and found that the firm had always used the actual rate according to the rate of exchange then existing. [89] A transcript from the books of Reis & Company showing remittances between the main office and the branches at the rate [fol. 110] of exchange current at the time of each remittance was received in evidence and marked "Defendant's Exhibit IV." Defendant Mayer looked over the books during his stay in Germany in the latter part of the year 1914. [90] That there never was any accounting between Richard Mayer and the partners in Friedrichsfeld. That the European partners did not take over the European assets on the outbreak of the war with America. That the witness kept the assets of the Boston branch on the partnership books until the latter part of 1914, or the early part of 1915, when they ceased to receive regular reports any more. That the share of Richard Mayer of the profits was credited to him annually on the books in the private ledger at Friedrichsfeld. This private ledger is the same thing the witness described as a secret ledger.

[91] After April 6th, 1917, the witness paid out moneys for Richard Mayer to his relatives on the instructions received from him during his stay in Germany in 1914. The amount so paid out amounted to about 50,000 marks. The [92] firm further paid 266,000 marks for taxes. This was a war tax for increase of capital during the years 1914, 1915 and [93] 1916. This was a personal tax on Mr. Mayer's interest in the firm capital and the firm had to pay it for account of Mayer. The bill was made out for Mr. Mayer and was paid for Mr. Mayer and the actual figure was 266,-132.40 marks. [94] The tax was levied in 1916 and was paid on December 10, 1917.

[95] That certain employees were entitled to a share or percentage of the profits of the entire business of Reis & Company including the profits of the branch houses. [96] One of these employees was

Mr. Ely who was entitled to 5 per cent of the profits. The agreement with Ely is dated May 22d, 1913, and was written out by Richard Mayer [98] himself. The agreement was marked in evidence "Defendant's Exhibit VI."

[99] Another employee was Mr. Leiser, who was also entitled to five per cent under a written agreement dated May 29th, 1913, which remained in force until November 30th, 1918. [100] The agreement was marked in evidence "Defendant's Exhibit VII."

[fol. 111] [101] Another employee was Adolph Sanft, who was entitled to one-half of one per cent under an agreement dated May 12, 1913, and which has no fixed duration. The agreement was marked in evidence as "Defendants' Exhibit VIII."

The fourth employee is Mr. Heinstein, who is entitled to a one per cent bonus of all the profits of the firm. This agreement was dated September, 1910, and was for an unlimited [102] time. The agreement was marked in evidence as "Defendants' Exhibit IX."

All four employees were in the actual employ of the firm when Richard Mayer became a partner and continued in the employ of the company and were in such employ on April 6th, 1917, and later. Mr. Mayer was fully informed about all the agreements with the employees for percentages of profits at the time he came into the partnership and prepared Ely's agreement personally.

[103] The witness claims that the distributive share of Richard Mayer in the European assets of the firm as of March 27th, 1923, is about 27,000,000 marks.

On cross-examination by the plaintiff the witness testified that there had never been an accounting between the European partners and Richard Mayer since Mr. Mayer was admitted to the firm in 1913.

[105] That the Boston accounts were kept in Germany until late in 1914 or early 1915 and that after that time remittances were made from Germany to Boston for the purpose of buying linters and cotton waste for the account of the firm. It was for the purpose of buying them for export to Germany. These transactions were during the war and before the entry of the United States into the war. The money was sent over for the purpose of buying these [110] things to be sent to neutral ports. With reference to shipments intended for Germany through neutral ports, the custom was that the papers and shipping documents would [111] eventually reach the witness in Germany. There was never any agreement of any kind between the partners as to the rate of exchange to be employed in interpartnership accounts, nor was there ever any agreement of any kind be-

[fol. 112] tween the partners as to an accounting other than the written partnership agreement.

[112] That in addition to the taxes assessed to Mr. Mayer and paid by the firm, there were separate tax bills to the other partners. That as a matter of tax collecting [113] practice in Germany, if the witness had not paid Mr. Mayer's tax, an officer of the court would have come and [114] seized Mr. Mayer's assets. That the payments to Mr. Mayer's relatives in Germany were on Mr. Mayer's oral request as far as the witness remembers.

[116] The witness prepared the documents marked "Exhibit II," and attached to the defendants' answer as an attempt to comply with the prayer in the plaintiff's bill to furnish a statement as to the value of Mr. Mayer's share in the partnership in Europe. The book value of [123] Richard Mayer's interest in the European assets on December 31st, 1916, was 2,107,449.89 marks. The book value on April 6th, 1917, as shown on page 16, Exhibit C of the defendants' answer, was 1,836,353.80 marks. That figure was arrived at by taking Mayer's share of the whole year's profits for the year 1917 and then taking the proportion of those profits that 96 days up to April 7th, 1917, would [124] represent as a proportional part of the year. Then they subtracted war tax and the payments to Mr. Mayer's relatives. The computation just explained is one shown on page 4 of Exhibit C attached to the answer of the defendants Reis et al. The actual value of Mr. Mayer's distributive share on May 6th, 1917, was not shown on the answer. The actual value of Mayer's interest on the date when the defendants prepared their answer is shown on page [125] 16, Exhibit C. The actual value of the unliquidated assets is shown in the answer as of April 6th, 1917. On page 14 of Exhibit C, the value of the land and buiidings in Friedrichsfeld on that date was 506,408 marks and on page 15 of Exhibit C, the actual value of machinery at Friedrichsfeld on that date was 128,620 marks. These two items cover the total value of the land and machinery at [126] Friedrichsfeld on April 6th, 1917. The share of Richard Mayer in the excess of this actual value over the book [127] value is easily ascertained, 20 per cent of the difference. [fol. 113] The book value for December 31st, 1916, and for April 6th, 1917, [128] was practically the same. The witness has shown the actual value of the plant and machinery at Friedrichsfeld and the sale price of the plants at Herzberg and Franzenthal. The actual value of the Franzenthal and Herzberg plants on April 6th, 1917, were the same as the book values. That the figures the witness has given in so far as they [130] deal with book values correspond exactly with the books. So far as they deal with actual values they are the witness's best information as to the fair market value at [129] the time. The great bulk of the assets on April 6th, [131] 1917, were cash, bills receivable and merchandise. Taking the statement of the assets, it appears that the land and buildings, plant and machinery aggregate only a little [130] over 848,000 marks out of something over 17,000,000 marks. The statement of the assets referred to is the Price, Waterhouse report printed on page 145 of the record for the Circuit Court of Appeals in the case of Mayer v. Garvan, which purports to be an amalgamated balance sheet as of December 31st, 1916, of Reis & Company, Europe, and giving the total assets of 15,282,170.55 marks and that everything below the item marked "Merchandise" on that account were quick assets, which were liquidated within the year 1917. In regard to the assets liquidated during 1917 the witness has continuously carried since April 6th, 1917, on the books, a credit for Richard Mayer in marks of the amount [132] represented by the

book value. The amount was carried in [133] marks in favor of Richard Mayer. The witness produced [134] the private capital ledger of the partnership. This book showed entries purporting to state the share of Richard Mayer in the capital account of the firm for 1916, 1917, 1918, 1919, 1920, 1921 and 1922. The witness testified that Mr. Mayer's interest had been carried on the firm books since April 6th, 1917. The entries [135] up to January 1st, 1916, were made by the witness. Afterwards they were made by a chartered accountant or public accountant. The entries since the year 1916 have been made by a firm of accountants who made the entries in the partners' private ledger. All the entries in this ledger were made on the dates they appear and were made in the regular [fol. 114] course of business. The last entry bears the date of January 1st, 1922, and shows a balance of 2,581,279.95 marks. This book is one of the books withheld from Price, Waterhouse when they were over in 1920.

[138] The witness testified that in giving his evidence as to the values of the German property and of Mayer's interest in the German property both on April 6th, 1917, and [139] today, he had given the value in marks. There is only [141] one kind of marks in Germany. Since the beginning of the war in 1914 there have been no gold marks in circulation in Germany. Witness obtained from the printing office of the State, the government and from the Minister of Interior Affairs, an official paper to make known new [146] laws issued August, 1914, which was received in evidence as "Plaintiff's Exhibit 2". When the witness gave his opinion as to the fair market values of the property of Reis & Company, he meant the fair market price in the kind [147] of marks that were then current, paper marks. When the witness mentioned that there was only one kind of marks he knew as everybody knows here that the mark has depreciated since April 1914. He only wanted to say that according to the German law the mark is still legal tender today.

[149] On cross examination the witness testified that the book value of the interest of Richard Mayer in the European assets of Reis & Company on December 31st, 1916, as shown on page 8 of Exhibit A in the answer of Edwin Reis et al., was 2,107,499.89 marks and that that is the same figure which Price, Waterhouse & Company had for the same interest. There was a difference of 186,000 marks for the interest on April 6th, 1917, which was due to the fact [150] that Price, Waterhouse made their statement as of April [149] 1st and the witness made his as of April 6th. The witness computed the book value of Richard Mayer's interest by taking 20 per cent of 96/365ths of the profit for the year 1917, which was 45,686.31 marks, and adding it to the book value of December 31st, 1916, so that before deducting the [150] liabilities, the book value of Richard Mayer's interest on April 6th, 1917, was 2,153,186.20 marks instead of 2,149,792.90 marks as shown [fol. 115] on Price, Waterhouse & Company's report. The liabilities which the witness speaks of as being deducted are 266,432.40 marks paid for taxes for Richard Mayer personally and 50,400 marks

paid out to the [152] relatives of Richard Mayer in Germany, Page 8 of Exhibit C of the answer of defendants Reis et al. gives the detail of the payments to relatives. 600 marks were paid prior to April 6th, 1917, and the balance was paid after [153] April 6th, 1917. The tax bill of 265,432.40 marks had been rendered at the beginning of 1917 and prior to April 6, 1917, the tax was on the increase of property for [154] the years 1914, 1915 and 1916, using the value of the property owned on January 1st, 1914, as a basis and was levied under a law passed June 21st, 1916. The bill was [155] not paid until after April 6th, 1917. This tax was on the increase of capital engaged in the business and was in addition to the income taxes which had to be paid just the same. The first third of the tax was to be paid three months after receipt of the bill, the next third before November 1st, 1917, and the last third March 1st, 1918. The entire tax was paid by March 4th, 1918. [156] The figures of book values shown in Exhibit C, page 4 of the answer of the defendants Reis et al. took in the actual value with the exception of the plant at Friedrichsfeld. The book value was the actual value with the exception of the plant at Friedrichsfeld.

On further cross examination by counsel for the defendant Mayer, the witness testified that in the first six pages of Exhibit A of the defendant's answer, he had purported to give a balance sheet of the different divisions of the firm and that consolidating the asset side of the first six pages would give total gross assets of 15,802,922.33 marks. On the liability side there appears, taking the items except the items of capital, profit and loss, various sums which total 4,193,413.74. This figure of 4,193,413,74 marks liabilities does not take into account a liability of 120,340.18 marks representing bonuses due employees on German business. Adding that figure to the gross liabilities, we get a total of 4,313,753.92 marks. Subtracting the gross liabilities including bonuses due [fol. 116] from the gross assets, the partners capital balance on December 31st, 1916, is 11,489,168.41 marks as appears on page 7 of Exhibit A of the Reis answer. Cash on hand as shown in the balance sheet meant actual cash in the office. Bonds meant different securities, but does not include any of the investment account items that appear on page 2. Accounts receivable meant ordinary sums due in the course of business.

Included in the liabilities are reserve aggregating 850,000 marks. These consisted of the following items:

1. 50,000 marks reserves for pensions to employees; for war invalids and to help laborers who were in bad circumstances. This reserve was set up December 31st, 1916, and the employees were informed of it. After it was set up and the employees informed of it [174] the firm considered it as a debt. All of this fund was eventually paid to employees and more in addition thereto.

2. 500,000 marks reserves for losses on contracts. 200,000 marks of this fund was set up at the end of 1916, the other 300,000 marks had been set up some time before. This reserve was not a general

one against future possible contract liabilities, but was set up against certain specific contracts to furnish merchandise which the firm had undertaken at low [175] prices out of the war time and which had to be fulfilled after the war. At the time the reserves were set up the selling price was already much less than the cost to the firm. It was against these losses in fulfilling orders that they were obliged to set up a reserve. This reserve was used up in 1918, 1919 and 1920.

3. 300,000 marks reserves against losses which would occur in the transition period after the war. It was a reserve to meet expected changes in value occurring out of risks from change of war time into peace times. It was a reserve that was allowed to be [176] set up by the German law. It was the opinion of the firm and the opinion of their chartered accountants that it was necessary to make these reserves on the firm balance sheet. In fact it turned out later that the reserves were much too [177] small.

[fol. 117] The accounts did not include the assets of the Manchester branch because the firm did not receive anything out of those assets. They were not shown on the books as assets. The English public trustee took in his hands and kept the 4,500 pounds that were realized from the sale of the assets of the Manchester branch.

[183] On April 6th, 1917, the European partners did nothing by way of separating Richard Mayer's assets from the assets of the firm or the other partners, but carried him on as a partner and the accounts showed what was due him at any time. They did not take and put aside any assets as separate assets of Richard Mayer on April 6th, 1917.

[184] On April 6th, 1917, the business that Reis & Company was engaged in in Europe was the same as before and that business has been carried on without any break up to today. They continued the partnership as if Richard Mayer was still a partner. They continued to use the assets in the ordinary course of a going business as if Mr. Mayer was still a partner, as they considered him.

[187] The partners in Reis & Company at the present time are Karl Strauss, Alex Leiser, Edwin Reis and Richard Mayer, who is still kept on the firm books as a partner and is still in Handel's register as a partner. What he really is now the witness does not know. That Mr. Leiser was taken into partnership from the first of January, 1920, and Mr. Mayer's brother signed his new partnership agreement [188]. Witness did not consult Richard Mayer himself about taking Mr. Leiser in.

[189] Since April 6th, 1917, the firm always kept a separate amount in marks in the bank which was used as a credit [199] for the partnership and has used the plant. The Herzberg plant was sold before Leiser became a member of the firm. The Franzenthal plant was sold a few months later. In 1917, after April 6th, the firm bought only a small amount of merchandise. The cotton waste business was at a standstill because it was forbidden to deal in cotton waste. At that time the government had seized all cotton waste. The cotton [fol. 118] waste which the firm had on hand had already been seized at that time and was in charge of government officials. The govern-

ment moved all the cotton waste out of their plant in the course of the year [191] 1917. That the firm received from the government certain quantities of cotton waste for the purpose of the cleaning waste department.

[192] In collecting the accounts receivable from the debtors after April 6th, 1917, the firm made no distinction between the accounts that had arisen before that date and those that arose afterwards. The firm always kept a large balance, especially all sorts of money in marks, with the intention of always having those marks ready for any purpose.

[193] That all assets in Germany were in the hands of the partnership on April 6th, 1917. In the course of the years 1914 and 1915 Reis & Company caused to be sent over from Europe to Richard Mayer nearly $2,500,000.

[194] When Richard Mayer became a partner in 1913 he sent over a statement purported to be taken from his books here in Boston. The figures on the statement were in dollars. The first entry on page 41 of the private ledger under the heading of "Richard Mayer" shows that he was credited on July 1st, 1913, as follows: "Per investment, according to inventory, marks 206,054.02."

[205] As long as there were normal exchange rates for the mark, the partnership used for the convenience of the bookkeeping, for the dollar, 4.20, for francs 18 and for the pound, witness thinks, it was 20.14. That was used as a matter of convenience as long as the mark [206] exchange rate was a normal one. Before April 6th, 1917, [207] this custom had changed somewhat. The firm never reckoned up their books up to November 30th in any year after 1913, including a statement of the Boston business, because the reports stopped coming from Boston sometime in 1914. The state of the business in Boston did appear on the books on November 30th, 1913. Mayer reported his sales and [208] receipts in the usual way. He reported in dollars and probably those accounts were carried to the firm accounts in marks at 4.20 because that was the usual way. The [fol. 119] firm took the figure 4.20 because they wanted the round number. 4.20 was more convenient to take than 4.18 or 4.21, and 4.20 was about the average of the exchange rate. They took round numbers for all the exchange rates. It was about the normal exchange rate in prewar times. The witness never looked for the question of the equivalents of the German gold mark and the United States gold dollar. Witness is a business man, not a scientific man. For English pounds the firm used on its books 20.40 as long as it was the actual rate. The report of Price, Waterhouse shows that at the end of 1917 they changed the rate. When Ludwig Reis died the firm used the balance sheet of December 31st, 1917, to figure from according to the partnership agreement and paid out all the assets, with the exception of the American partnership share, which was left open until the accounting should be possible.

[213] On redirect examination the witness identified [214] and put in a list of valuations of Richard Mayer's share as of April 6th, 1917 and March 6th, 1923, marked respectively "Defendants' Exbits XII" and "XIII."

The reserves referred to in witness' previous testimony were made

partly in the course of the year 1916 and partly December 31st, 1916, and were made after consulting with chartered accountants.

[219] About $2,500,000 was sent over to Richard Mayer by Reis & Company for the purchase of cotton. A very large part of this was not needed and they cabled continuously for the return of the money not needed, which the witness thought amounted to more than $1,000,000. Only $300,000 was returned, and this in 1915. This $300,000 when returned was entered upon the firm's books in marks at the actual rate of exchange prevailing then, which was a higher rate than 4.20.

[220] The balance of the excess money in Richard Mayer's [221] hands amounted to about $600,000, which they demanded of Mayer continuously but never received.

[220] The following concession was made by the attorney for the defendant Richard Mayer:

"It undoubtedly is the fact that this great quantity of money [fol. 120] came over and that a certain amount was used for the purchase of cotton, that a certain amount was returned and that left a substantial amount still to be accounted for, and that balance is a part of these assets in America."

[223] When Richard Mayer was in Germany in the summer of 1914 he saw the entry of 206,054.02 marks in the private ledger. This entry was made July 1st, 1913, and represented his contribution to the firm assets.

[226] The witness stated that Richard Mayer approved of the firm carrying him on the books as a partner. He knew that Richard Mayer approved of this through the contents of letters sent by Mayer to his brother in Germany.

[227] There was about half a dozen such letters which the brother Karl Mayer showed the witness, who also recognized [255] Richard Mayer's handwriting. All the balance sheets up to and including that of December 31st, 1919, were shown to the defendant Richard Mayer's brother, Karl Mayer.

[230] Some time between July and October, 1914, the firm changed from the exchange rate of 4.20 in making remittances to America. This change was made as soon as the actual rate changed.

[238] Witness testified that since April 6th, 1917, down to date, the European partners have continued in the form of cash on deposit in banks a sum sufficient to pay out the capital interest of Mr. Mayer as shown by the books. The European partners still have such an amount in the form of cash in German marks. With reference to the accounts receivable, which were collected in the regular course of business, the average credits were about thirty days.

[254] A general power of attorney from Richard Mayer to his brother, Karl Mayer, dated September 28th, 1922, was marked in evidence "Plaintiff's Exhibit 3."

[288] A qualified expert and official appraiser who had examined and was familiar with the tangible property of Reis & Company in Germany was present but did not testify since it was stipulated by all [fol. 121] parties that he was to be taken as to have testified to the same values which the defendant Reis had testified to.

[289] JULIUS LAIBLE, called as a witness by the defendants, Reis et als., testified that he lived at 47 Prince Street, Jamaica Plain, and that he had been employed by Reis & Company before Mr. Mayer became a partner, as manager of various departments. After Mr. Mayer joined the firm, witness was office manager for Reis & Company, Richard Mayer Company and the Anglo-American Cotton [291] Company. At the time Mr. Mayer joined, the business of Reis & Company over here was conducted as a branch of Reis & Company in Germany. In other words it never showed a profit. If we bought anything Reis & Company bore the cost of merchandise. If we sold anything Reis & Company in Germany got the benefit of the sale price. That system was continued after Mr. Mayer joined and witness did not believe it ever stopped. Before the outbreak of the European war, money would be sent from Germany to Reis & Company, Boston. After that it was sent under various names. For instance, Wypelow & Company, Richard Mayer Company. Something over $2,000,000 was sent over [292] before outbreak of the war with America. In consequence of various requests, $300,000 was returned to Germany. Further requests were made thereafter but the witness does not believe further remittances were made. Richard Mayer consulted with the witness at times with reference to those requests for remittances. These requests were mad by cable and by mail and in the course of the witness's personal interview, which he had with the European members of the firm in the fall of 1915. They criticised affairs over here for not having sent them so much money. They wanted to know why there was so much delay in sending the $300,000. They wanted to know how much more they might expect. A further request was made in the spring of 1917 by Mr. Strauss, one of the partners. This request the witness believes was at the very end of March, 1917, just a few days before the declaration of war.

[297] Mayer had a talk with the witness at one time after the property was seized and asked the witness if he knew of an exchange [fol. 122] rate fixed in the partnership agreement. Witness said no. He said if he remembered correctly the rate was fixed at 4.20. Witness said that was quite possible. After the partnership agreement arrived here from Germany, during 1919, Mayer came and told the witness that he was much disappointed to find that the exchange rate was not provided for in the partnership agreement, nor was the interest rate provided for, as he had figured in the partnership.

[299] On cross examination by the plaintiff, the witness testified that in August, 1917, shortly after the declaration of war between tthe United States and Germany, witness had a conversation with Richard Mayer in which Mayer stated that Mr. Murchie recommended to him to make an investment in some gasoline stock, if there were any further idle funds to spare. Mayer asked the witness to look into the matter and to be present at a conference with the promoters of that gasoline stock, which took place a [300] day or two after at Mr. Mayer's office. At this conversation Mayer asked the witness how he could go into this speculation or investment as far as the partnership was concerned and witness told Mayer that he could not use the partnership funds for any such purpose

because the partnership agreement prohibited it. Witness pointed out to Mayer that if he went into it he did so at his own risk. If it resulted in a gain, he would have to submit the matter to his partners later on, explaining what he actually did, and possibly divide the gains with them. On the other hand witness pointed out to him that if it should result in a loss, he also would have to lay the cards on the table and say, "Here, gentlemen, here is what I did. I had hoped that it would turn out right, but it happened to turn out wrong. If you wish to charge me with the entire loss, you may do so. If not, I will accept anything which is agreeable to you." Mayer nodded his head in reply to this statement. Later witness was present at a conference between Mayer and the promotors of the gasoline stock at which the purchase was made and the price was agreed upon subject to Mr. Murchie approving the [302] details. Later Mr. Mayer told witness about Mr. Murchie [fol. 123] having approved of it.

From time to time thereafter witness had talks with Mr. Mayer, and Mr. Mayer and Mr. Murchie regarding Mayer's position with respect to the partnership assets here in Boston. Mayer took witness along to Mr. Murchie's office at different times. It was a question of making sure whether we were safe as far as Washington was concerned. Mr. Murchie had made various trips to Washington to find out what Washington's attitude would be in regard [303] to this property. There was talk about trying to get certain statements from the German partners which would help Mayer in his efforts to get the property back. This was after the Alien Property Custodian had taken possession of the property. In the latter part of 1918 right after the armistice, there was a conversation with reference to endeavoring to get evidence from the German partners which would help Mayer in his claim against the Government.

[327] The Richard Mayer Export Department was the name under which Reis & Company's export business, as distinguished from the domestic business of Richard Mayer Company, was being conducted.

[335] From April 6th, 1917, up to the time the property was seized by the custodian, the Boston business was carried on the same as before. The Anglo American Cotton Company, of which the witness was the manager, was not liquidated but went ahead with its business. The Richard Mayer Company was not liquidated, but that at some time after the outbreak of the war Mr. Mayer expressed a wish that they should carry this merchandise so that it would not appear to the Government officials here, and similar officials, that they were carrying too much cotton over here to be shipped after the end of the war to Germany. Apart from that statement in regard to reducing the amount of cotton stock, not a word was said about liquidating. The books were not closed in any way to the witness's knowledge on April 6th, 1917. The export department had stopped doing export [336] business in March, 1915. On April [fol. 124] 6th, 1917, no change was made in the way the affairs of the export department were handled. Between April 6th, 1917, and the time the property was taken over by the custodian, witness knows of no attempt being made by Mr. Mayer to liquidate the assets

and state an account, showing the interest of the German partners in it.

[336] On cross-examination by counsel for the defendant [338] Mayer, witness testified that since October, 1921, he had been in more or less continuous communication with the German house. Witness's exact position at the outbreak of the war, April 6th, 1917, was as manager of the Anglo American Cotton Company, and his salary was paid by that [339] company. Witness received no salary from the Richard Mayer Company after January 1st, 1917, nor from the export department after that date. The active business with which the witness concerned himself after April 6th, 1917, was principally the business of the Anglo American Cotton Company, but not confined to it. Ninety-eight out of the total number of 100 shares in that company had been issued in the name of the witness, but he endorsed it and Mr. Mayer took the shares from him during the fall of 1915.

[343] Witness went to Germany in November, 1914, and returned in February, 1915, and he again went to Germany in September, 1915, returning in April, 1916. In the latter part of 1915 witness had a conversation with Ludwig Reis in which witness said that Mr. Mayer did not wish them to [344] go in so heavily in the business which they were carrying on at that time and not to forget that we were at war. It might include a lot of risk. Ludwig Reis replied, "I can see it. The stuff is getting into Mayer's head. I noticed that for some time past. He does not seem to want to work any more. I thought so from the beginning. You can tell him to go where he came from and keep his little business over there, but we will continue over here same [345] as before." Witness told Mayer about this conversation a few weeks after his return, probably along in the middle of 1916. Witness told Mayer immediately upon landing in New York that Mayer had earned quite a lot of money since the witness had seen him last, through [fol. 125] the operations of the German firm. Mayer replied that he had heard of this big amount of money and asked whether his share would [346] equal the then existing assets over here. Witness and Mayer started figuring the then prevailing rate of exchange and arrived at the point that his share would equal the assets over here and possibly more. The rate [352] of exchange was figured roughly at five. It was about 5.10 or 5.15. When witness told Mayer about what his share in the German assets came to, he meant that the whole property was about 15,000,000 marks over there. [353] Witness never saw the balance sheet and he was merely repeating what he had heard. That when he figured out with him his share at the then existing rate, it was something like between $600,000, and $700,000.

[370] The Anglo American Cotton Company continued right on actively up to the time the Alien Property Custodian seized it and thereafter, and the witness continued as the manager of that company until within a few weeks before it stopped doing business. The witness ceased his connection with that company in the early part of May, 1921.

[373] The Richard Mayer Company was purchasing new merchandise after April 6th, 1917, on a ratio of about 30 per cent less than it was purchasing during its biggest year, which [375] was 1916.

The domestic department did not after the early part of 1917 turn its money into securities as distinguished from business assets except that it bought some liberty bonds which it felt its duty to buy.

[377] On redirect examination the witness testified that he was not told by Ludwig Reis or any of the other partners to report the conversation that he had in the year 1915 to Mr. Mayer. In fact not all the partners over there knew about it. They were only there off and on. They were not all there when the case was explained all the way through.

Witness did not have any competent information about the value of the Germany assets. He simply heard an estimate of profits for the years gone past. He thinks that they had earned something like 6,000,000 marks the preceding year. He seemed to have the [fol. 126] idea that they almost had 10,000,000 marks, 8,000,000, whatever it was, and he arrived at some figure like 15,000,000 marks.

With reference to witness's conversation with Mr. Mayer as to the agreement that was reached to tell a certain kind of story, that was not all agreed upon in one conversation. Mr. Mayer came back a few days afterwards and did not like the idea and said in substance, "We probably won't get away with it."

Witness received a telegram from Richard Mayer on January 18th, 1921, which stated that he was not thinking for a minute of liquidating the business of the Anglo American Cotton Company. The telegram was marked in evidence "Plaintiff's Exhibit 15".

Counsel for the German defendants consented that if there should be any question about the plant in Friedrichsfeld, the German defendants will sell it between now and the time of the decree or at any required time and turn the cash amount into court.

[378, 379, 380] Richard Mayer made remittances to L. Stadeker, a relative of Edwin Reis, at the request of Edwin Reis. These payments were carried on the books as accounts receivable from Stadeker. These payments continued after the outbreak of the war with America up to August 30th, 1918. The schedule of these payments is in evidence as "Defendant's Exhibit" marked with the letter "I". Counsel for Edwin Reis admitted that these payments were actually on account of Edwin Reis.

Offers in Evidence

Exhibits

During the trial the following exhibits were received in evidence:

Plaintiff's Exhibits

1. Letter of June 23, 1922, Elias Field to Edward F. McClennen with enclosure.

2. Document, August, 1914, issued by Minister of Interior Affairs, Germany.

3. Copy, September 28, 1922, general power of attorney.
[fol. 127] 4. Report of Haskins & Sells, accountants, on the Richard Mayer Export Department, October 10, 1914 to May 31, 1918.
5. Report of Haskins & Sells, accountants, on the Richard Mayer Company, October 10, 1914 to May 31, 1918.
6. Report of Haskin & Sells, accountants, on the Anglo American Cotton Company.
7. Photostatic copy of insurance policy on cargo of Steamship "Carolyn."
8. Photostatic copy, affidavit, Mr. Richard Mayer.
10. Assessment of securities by Lee, Higginson & Company.
11. German original and translation of the private ledger account of Richard Mayer on the books of Reis & Company (7 sheets).
15. Telegram, January 18, 1921, Richard Mayer to Julius Laible.

Defendants' Exhibits

I. Exhibits A, B and C of Exhibit 2 of answer of defendants Edwin Reis et als.
II. For identification page 1-8 of answer of defendants Edwin Reis et als.
III. Receipts and statements of account concerning Manchester house.
IV. Transcript from books of Reis & Company showing rates of exchange.
V. Tax receipt for taxes paid for Richard Mayer.
VI. Contract, May 22, 1913, Reis & Company and Gustaf Ely.
VII. Contract, October 13, 1910, Reis & Company and Leiser.
VIII. Contract, May 12, 1913, Reis & Company and Adolph Sanft.
IX. Agreement, September 1910, Reis & Company and Heinstein.
X. Letter of November 3, 1914, signed "Dick," from Richard Mayer to Reis & Company in English.
XI. Letter of November 3, 1914, signed "Dick," from Richard Mayer to Reis & Company in German.
[fol. 128] XII. Statement of actual value of Richard Mayer's share in the European assets of Reis & Company of April 6, 1917.
XIII. Statement of actual value of Richard Mayer's share in the European assets of Reis & Company on March 26, 1923.
XIV. Telegram, January 3rd, 1917, Richard Mayer to Edwin Reis.
A. Letter, June 26, 1922, Edward F. McClennen to Elias Field.
B. Letter, November 15, 1920, Richard Mayer to Karl Mayer.
C. Letter, March 6, 1921, Richard Mayer to Karl Mayer, translation attached.
D. Letter, July 4, 1919, from defendant Strauss to defendant Mayer beginning "My dear Dick," signed "Fred."
E. Letter, August 10, 1919, from defendant Strauss to defendant Mayer.
F. Letter, March 9, 1920, defendant Strauss to defendant Mayer.
G. Letter, November 4, 1920, defendant Strauss to defendant Mayer.

H. Letter, September 22, 1921, defendant Strauss to defendant Mayer.

J. Balance sheet, April 1, 1917, Richard Mayer Company.

K. Balance sheet, April 1, 1917, Export Department, Richard Mayer Company.

L. Balance sheet, April 1, 1917, Anglo-American Cotton Company.

M. Balance sheet, May 31, 1918, Richard Mayer Company.

N. Balance sheet, May 31, 1918, Richard Mayer Export Department.

O. Balance sheet, May 31, 1922, Richard Mayer Company.

P. Balance sheet, June 1, 1922, Anglo-American Cotton Company.

Q. Balance sheet, June 1, 1918, Anglo-American Cotton Company.

The portions of such exhibits material to the questions raised on this appeal are herewith reproduced as part of this condensed statement of the evidence.

[fol. 129] It is agreed by the parties that the original exhibits may be transmitted to the Circuit Court of Appeals and referred to as part of the evidence at the hearing of the appeals in this case.

Exhibits to be reproduced as part of this condensed statement are as follows:

Plaintiff's Exhibit 1, omitting the enclosure, which is already printed, a copy of said enclosure being annexed to the answer of the defendant Mayer.

A portion of Plaintiff's Exhibit 2, including statutes numbered 4434 and 4448.

Plaintiff's Exhibit 3.

Plaintiff's Exhibit 4.

Plaintiff's Exhibit 5.

Plaintiff's Exhibit 6.

Plaintiff's Exhibit 11, original and translation.

Defendant's Exhibit IV.

Translation of Defendant's Exhibit V.

Translation of Defendant's Exhibit VI.

Translation of Defendant's Exhibit VII.

Translation of Defendant's Exhibit VIII.

Translation of Defendant's Exhibit IX.

Defendant's Exhibit XII.

Defendant's Exhibit XIII.

Elias Field, Special Assistant to the Attorney General, Attorney for Plaintiff. Edward F. McClennen, Attorney for Richard Mayer, Richard Mayer Company, and Anglo-American Cotton Co. Clifford P. Warren, Attorney for Defendants Edwin Reis, Karl B. Strauss, and Anny Reis, Individually, and as Trustee for the minor Children of Ludwig Reis.

[fol. 130] Approved: Charles F. Johnson, U. S. Circuit Judge.

PLAINTIFF'S EXHIBIT 1 (2 Papers)

Brown, Field & McCarthy, 927 Oliver Building, 141 Milk Street, Boston, Massachusetts

June 23rd, 1922.

Edward F. McClennen, Esq., 161 Devonshire Street, Boston, Mass.

Mayer vs. Alien Property Custodian

DEAR MR. MCCLENNEN: I am in receipt of a letter from the Alien Property Custodian directing me to return to you the enclosed document and advise you that the Custodian cannot acknowledge the receipt thereof as a compliance with the requirements of the decree or as a performance of the condition of Mr. Mayer's bond.

The Custodian points out that it is manifest that the proposed accounting can in no sense be regarded or accepted as a compliance with the requirements of the decree. Mr. Mayer's attempt to avail himself of the Price, Waterhouse Report as a determination of the value of the German assets is clearly unwarranted under Judge Bingham's finding that an account could not be stated on this evidence. His attempt to ignore the actual rate of exchange and to base his accounting on the artificial figure of 4.20 marks to the dollar is without justification, particularly in view of Judge Bingham's express finding that the evidence did not warrant the finding of an agreed ratio of conversion in accounts between the partners.

Mayer's claim to charge the Custodian with interest upon the partnership funds held by him is so clearly untenable that discussion thereof would be unprofitable. If it is necessary to have an examina- [fol. 131] tion of the records and data of the partnership by certified public accountants under the joint supervision of attorneys for Mayer and for the government, it is the disposition of the Department to co-operate in every way with Mr. Mayer in relation to the same. It is assumed that Mayer would now be in a position to obtain necessary information and data from his former partners to enable him to determine the true state of the accounts and render an accounting in accordance with the facts as to the value of the German assets.

Very truly yours, Elias Field.

F/K. Enc.

[MEMORANDUM.—Copy of enclosure is here omitted as the accounting is annexed to the answer of defendant Mayer. James S. Allen, Clerk.]

PLAINTIFF'S EXHIBIT 2

Extract from a Translation of Plaintiff's Exhibit 2

* * * * * * *

Statute Concerning the Modification of the Mint Law

(No. 4434)

Aug. 4, 1914.

We, Wilhelm, by the grace of God, German Kaiser, King of Prussia, etc., order in the name of the Empire, by consent of the Federal Council and the Reichstag, the following:

1

Until further notice the rules of paragraph 9 of the mint-law of June 1, 1909 are being modified to the effect that imperial treasury certificates and bank-notes can be issued instead of gold coins.

2

The Federal Council is authorized to determine the time when the rules mentioned under 1, are to become valid again.

3

This statute becomes valid on the day when proclaimed.
In witness whereof our own signature and affixed imperial seal.
Signed, Berlin Palace, August 4, 1914.

Wilhelm. Delbruck. (L. S.)

* * * * * * *

[fol. 132] Statute Concerning Imperial Treasur*ed* Notes and Banknotes

(No. 4448)

August 4, 1914.

We, Wilhelm, by the grace of God, German Kaiser, King of Prussia, etc., order in the name of the empire, by consent of the Federal Council and the Reichstag, the following:

1

Until further notice the Imperial Treasury notes are legal means of payment.

2

Until further notice Imperial Treasury is not obligated to redeem the Imperial notes, and the Reichsbank is not obliged to redeem its certificates.

3

Until further notice the private banks are entitled to use Reichsbank certificates—for the redemption of their own notes.

4

The Federal Council is authorized to set a date for the invalidation of clauses #1, 2 and 3.

5

With reference to clauses #2 and 3, this Act goes into effect July 31, 1914. As for the remaining clauses, the Act goes into effect when proclaimed.

In witness whereof our own signature and affixed imperial seal.
Signed, Berlin, Palace, August 4, 1914.

Wilhelm. Delbruck. (L. S.)

* * * * * * *

PLAINTIFF'S EXHIBIT 3

Translation

General Power of Attorney

Boston, Mass., Sept. 28, 1922.

I herewith appoint merchant Karl Mayer, Rohrbach, District of Heidelberg, as my General Attorney, and authorize him to represent [fol. 133] me in all deeds, to buy and to sell land, buildings, merchandise, and also in money matters for courts, registry of deeds, banks, to place and cancel mortgages, to open and close bank accounts in my name and stead, in brief, I authorize Karl Mayer, in my name, to do everything which I would do, as if I was in his place, and I acknowledge and ratify herewith every act and deed of said Karl Mayer beforehand, as executed and done by myself.
Boston Sept. 28th, 1922.

PLAINTIFF'S EXHIBIT 4

Haskins & Sells,

Certified Public Accountants, 30 Broad Street, New York

Cable Address: "Haskells"

New York, Chicago, Detroit, St. Louis, Cleveland, Baltimore, Pittsburgh, San Francisco, Los Angeles, Seattle, Denver, Atlanta, Watertown, London

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21703: Richard Mayer Company—Export Department

DEAR SIR: Pursuant to engagement, we have made an examination of the books, accounts, and records of the Richard Mayer Company—Export Department, 200 Summer Street, Boston, Massachusetts, and submit herewith nine pages of comments and the following described exhibits and schedules:

Exhibit "A"—Statement of Assets and Liabilities and Balance of Capital Accounts, May 31, 1918.

Schedule No. 1—Statement of Investments.

2—Capital Accounts.

Yours truly, Haskins & Sells.

Received at New York Office.

[fol. 134] Richard Mayer Company—Export Department

Comments on the Examination

Historical

Reis and Company of Heidelberg, Germany, did business in Boston from about 1902, to about 1916.

The books, records, and correspondence of Reis and Company are said to have been removed and destroyed during the summer of 1917.

It is claimed that the Boston business of Reis and Company was wound up in 1915 or 1916, by what process we are not informed.

Mr. Julius Laible says that they were unable to obtain credit and in fact were so afraid of attachment that the funds of the Company, the total amount being something over $10,000.00, were transferred to the Beacon Trust Company under the name of Laible and Rowe.

From these funds there was withdrawn $10,000.00 on June 28, 1915, by check made payable to O. S. Bauer. The check shows that Bauer withdrew the amount in cash. The cash was then paid over to Julius Laible who deposited it with the First National Bank,

Boston to the credit of Anglo-American Cotton Company on whose books it was credited to the Capital Stock account. Julius Laible informed us that this method of procedure was adopted because Bauer was so well known that it was easy for him to have checks of large amounts cashed and also that they did not want anyone to know of the relationship between the Anglo-American Cotton Company and the "people upstairs."

We are informed that O. S. Bauer was manager for Messrs. Staudt and Company, 184 State Street, Boston, Massachusetts.

Although it is claimed, that Reis and Company's business in Boston was wound up and all records destroyed, we are of the opinion that the Richard Mayer Company—Export Department, is, in fact, the successors.

Our examination of the purchase records of the Export Department—which, we had great difficulty in obtaining, as they had been [fol. 135] concealed under waste samples, in the Sample Room of the Anglo-American Cotton Company—reveals the fact, that the contracts existing between linters manufacturers and Reis and Company, were being carried out by Richard Mayer Company—Export Department.

It is a noticeable fact that all of the records of Reis and Company have disappeared and that the records of the Richard Mayer Company—Export Department, have been mutilated in such a manner as to render them almost useless.

When we inquired for the books of the Richard Mayer Company—Export Department there was produced for our inspection a package of loose sheets, consisting of ledger sheets and two and three column journal sheets. These sheets at one time represented a complete set of books consisting of ledger, journal, cash books, domestic sales record, and purchase book. The sheets had been cut so that the titles of the accounts and in many instances the date column had been removed and destroyed.

By a constructive process we have succeeded in building up what represents a more or less complete set of books.

We secured a loose leaf binder and have placed therein the 120 ledger pages presented to us, which have been marked by us for identification, with red figures in the lower right hand corner.

The new ledger is made up as follows:

Merchandise and Proprietary Accounts	A1 —24
Operating Accounts	B25—50
Personal Accounts	C51—120

The headings of the pages representing the cash transactions, had also been cut off so that the dates (months and years) were destroyed. These pages had been torn from a three column bound book.

As marked by us for identification, these pages from 8 to 91 apparently show the cash transactions from December 1, 1914, to February 5, 1917.

The pages which would have been numbered 1 to 7 inclusive, had

a complete sequence of reference numbers been maintained on the ledger sheets, are missing.

[fol. 136] We also found three loose pages—which we have marked for identification on the used sides as 150, 151, 152, 153—upon which the particulars of the transfer of the cash received on account of seizures made by the British authorities and the remittance to "Wipeclo Mills" entered.

Forty-four loose pages of journal entries have been marked by us as 1 to 44. These pages had been torn from a bound two-column journal and all headings and dates had been removed.

The entries as identified by us apparently cover the period from December, 1914, to September, 1916.

Loose pages, torn from a two-column bound book with headings and dates removed, marked by us as S1 to S19, apparently cover all the domestic cotton sales from January, 1915, to July, 1916.

Four loose pages, torn from the same book, marked by us for identification as S151 to S157, apparently show the domestic sales of linters from March, 1915, to June 1915.

The purchases are recorded on 29 pages marked by us for identification as P2 to P29. These pages had also been removed from a two-column bound book and all headings and dates had been removed.

The new assembly of records referred to above which bear our identification marks were left in the Company's office.

General

The chief activities of the Export Department were the receipt of large sums of money from abroad, which were credited to an account bearing the fictitious name of Wipeclo Mills and the purchase and shipment of large quantities of cotton, linters and waste to fictitious consignees in foreign countries.

We cannot find that any sales record was made of the foreign shipments, excepting such data as to cost of purchases and cost of shipments as was collected in loose folders. The total cost of each of these shipments, irrespective of the consignee, was charged, without any added profit, to Wipeclo Mills account.

The profit realized on a few domestic sales was credited to the account of Wipeclo Mills.

[fol. 137] During the period from December, 1914, to April, 1915, this department received from Wipeclo Mills, (who, we are informed is, in fact, Reis and Company of Heidelberg, Germany) over two millions of dollars and shipped to foreign countries, cotton, waste and linters costing apparently $1,500,000.00.

The records show, that although the merchandise was shipped to various points such as Genoa, Italy, Gottenburg, Sweden, and Rotterdam, Holland, the duplicate bills of lading and the original marine insurance papers were sent to Germany through various indirect agencies.

Five of these shipments, destined for various foreign ports, were seized by the British authorities, who through the insurance com-

panies, paid in full for the estimated selling price of the merchandise on board.

In the case of the consignment of 3,064 bales of linters to Naamlooze, Vennootschap, Blaauwhoedenveem, at Rotterdam on S. S. Carolyn from Savannah March 30, 1915, the British authorities refused to settle for the full insured value. The cost of the shipment including freight, insurance, and handling appears to have been $68,266.55. The British authorities through the insurance companies paid $60,109.92 said to represent the delivered cost. The Richard Mayer Company—Export Department had secured United States War Risk Insurance on this shipment, and received from the United States Treasury Department a check for $62,595.03 in payment of their claim for $120,000.00 and interest.

A large number of these foreign shipments was consigned to one Louis G. Dreyfus, sometimes to Genoa, and at others to Rotterdam. Of this Dreyfus, Richard Mayer Company write to Hagedorn & Company of New York, on April 21, 1916, ". . . . he was solely our agent and was employed for this particular purpose on account of his Swiss nationality."

In this same letter Mayer Company state: "an endorsement for Messrs. B. Lenke Company, if necessary, could also be arranged here." We were unable to ascertain any particulars regarding said Company.

[fol. 138] The books record the receipt from Hagedorn & Company, insurance agents of $346,480.14 on account of the seized shipments, the notation showing that this amount was deposited with the Guaranty Trust Company of New York on July 21, 1915. On July 27, 1915, $300,000.00 of this amount was transferred to the National City Bank of New York, and placed to the credit of Mendelson & Company. The records of the National City Bank show this amount credited on July 28, 1915, to Mendelson & Company, Berlin. The latter account appears to have been quite an active one, and the final disposition of the $300,000.00 cannot be positively identified in it. However it shows that on a cable order of July 27, 1915, $300,000.00 was transferred to certain Swedish Banks. We are informed by the National City Bank that its account with Mendelson & Company was closed in February, 1917.

Assets

Cash—First National Bank, Boston $1,416.65

The cash on deposit was verified by certification from the bank. There was no cash on hand.

Cash—Smith, Coney, and Barrett, Liverpool $2,425.50

The last account current received from Liverpool was as of December 31, 1917. At that time there was a balance in favor of Richard Mayer Company—Export Department in the amount of £427.16.10. On May 4, 1918, they were requested to pay £390.12.9 for legal expenses. This would leave a balance in Liverpool of £37.

4.1. In the absence of a later confirmation of the account, we have not made any adjustment of the book figure as shown above.

Richard Mayer—Personal $20,576.76

This amount represents charges for payments made to Mr. Mayer's relatives by Reis and Company in Germany, amounting to $208.97 and sundry items of cash drawn, no explanation being given, amounting to $20,367.79.

Anglo-American Cotton Company $989.60

A check was drawn by Richard Mayer Company—Export Department on April 13, 1917, to the order of the Anglo-American Cotton Company in the amount of $989.60. This check was endorsed by the Anglo-American Cotton Company and deposited in [fol. 139] its bank.

The records of the Anglo-American Cotton Company make it appear that the check was received from the American Express Company. On the same day there was a check drawn by the Anglo-American Cotton Company to the order of the American Express Company for $989.60. Correspondence on file in the office of the Anglo-American Cotton Company shows that this amount was used for cable transfer of Fcs. 5,000 to Charles Strauss at Lugano, Switzerland. Charles Strauss is said to be Karl Strauss, an alleged partner of Reis and Company.

Capital Stock—Richard Mayer Company $100,000.00

The capital stock account of the Richard Mayer Company shows a receipt of $100,000.00 on June 5, 1915, from Reis and Company. The 1,000 shares of stock represented were issued on June 8, 1915, in the name of Richard Mayer. It would thus appear that the Richard Mayer Company—Export Department is indeed the successor of Reis and Company.

Capital Stock—Anglo-American Cotton Company..... $40,000.00

On June 28, 1915, there were two checks drawn to the order of S. A. Noether, #376 for $22,000.00 and #377 for $18,000.00. Both of these checks were endorsed in blank by Noether. O. S. Bauer, cashed these checks at the First National Bank, his name appearing on each as endorser. When we questioned Noether, the bookkeeper of the Anglo-American Cotton Company regarding these checks, he said that it was so long ago he had forgotten the particulars of the transaction; he did not know the name of the second endorser; and in fact, did not know who Bauer was. Mr. Laible finally remembered the transaction as being the method used to transfer the funds, for the Capital Stock of the Anglo-American Cotton Company from the Richard Mayer Company—Export Department.

This $40,000 together with the $10,000.00, withdrawn from the account of Laible and Rowe, through the agency of O. S. Bauer (previously mentioned in these comments) constituted the total au- [fol. 140] thorized capitalization of the Anglo-American Cotton Company.

Investments—Sundry Securities $351,779.97

The securities carried as having a book value of $351,779.97 are detailed in Schedule #1. We counted the United States Liberty Loan Bonds; the Gasoline Corporation Stock and the notes shown; the industrials and municipals were verified by certification from Lee, Higginson & Company, the custodians.

Liabilities

Richard Mayer Company $3,000.00

This represents the unaccounted for balance of funds that Richard Mayer used for trading in securities. Up to December 31, 1917, the securities carried for the Richard Mayer Company and Richard Mayer Company—Export Department, were carried in one account. At that date a division of the securities was made and this balance has not been taken up on the books.

The only other liability shown by the books is an understanding that $250.00 per month be paid to L. Stadeker, a relative of E. Reis.

Balance of Capital $514,188.48

A statement of this amount is shown in Schedule #2.

We are informed that Wipeclo Mills is a fictitious name and that the account, so called, on the books, represents a fund furnished by Reis and Company of Heidelberg, Germany, for the purpose of purchasing linters, cotton and waste to be shipped to Germany.

During the period from December, 1914, to March 31, 1915, there were approximately 37 shipments made.

There were no sales records of these foreign shipments made except in so far as the cost of the merchandise purchased and the cost of handling insurance and freight were charged to the Wipeclo Mills account.

Profits realized from several domestic sales of merchandise that it was impossible to ship, have been credited to this account.

[fol. 141] There is charged to the Wipeclo account through a journal entry $100,000.00, Richard Mayer Company being credited. The entry appears as "cancellation of entry" and we were unable to obtain any further particulars. Our examination of Richard Mayer Company's books shows that on January 12, 1915, it drew a check for $80,000.00 payable to Reis and Company, and passed a credit on account of a note for $20,000.00. The check referred to was endorsed by Reis and Company and deposited to the account of Laible and Rowe. During the period from February 5, to February 9, 1915, there was credited to Reis and Company $170,000.00, the funds having been withdrawn from the account of Laible and Rowe, and we are informed that these payments include the return of the $80,000.00 above mentioned.

The balance of Capital $514,188.48 represents the unexpended amount of the fund furnished by Reis and Company as coming

from Wipeclo Mills, and the amount received through Laible and Rowe and credited to Reis and Company capital.

During the period from November 28, 1914, to June 26, 1915, Richard Mayer received a salary from the Richard Mayer Company—Export Department $3,505.50 being at the rate of $116.85 per week.

We cannot find where Richard Mayer received any division of profit or other emolument.

Maurice Eisemann received $500.00 as part of a bonus for conducting the business successfully during Mr. Mayer's absence in Germany.

Leon R. Rowe, employe and stockholder in the Richard Mayer Company, received extra compensation in the amount of $8,300.00 for what reason we were unable to ascertain.

During our examination we found several letters from Hagedorn & Company, Insurance Agents, New York and the replies thereto. As the letters indicate a close relationship between the parties, we quote as follows from a few of them:

[fol. 142] Exhibit A

Richard Mayer Company—Export Department

Assets and Liabilities and Balance of Capital Accounts May 31, 1918

Assets

Cash—First National Bank, Boston ..	$1,416.65	
Cash—Smith, Coney, and Barrett, Liverpool	2,425.50	
		$3,842.15
Accounts Receivable:		
Richard Mayer, Personal	$20,576.76	
Anglo-American Cotton Company ..	989.60	
		21,566.36
Investments:		
Capital Stock, Richard Mayer Company, at Par	$100,000.00	
Capital Stock, Anglo-American Cotton Company, at Par	40,000.00	
	$140,000.00	
Sundry Securities, Per Schedule #1.	351,779.97	
		491,779.97
Total		$517,188.48

Liabilities

Richard Mayer Company		$3,000.00
Balance of Capital:		
Wipeclo Mills, Per Schedule #2	$397,185.34	
Reis and Company, Per Schedule #2	117,003.14	
		514,188.48
Total		$517,188.48

[fol. 143] Exhibit A—Schedule No. 1

Statement of Investments May 31, 1918

Bonds and Stock

Par value		Book value
$7,000.00	St. Louis and San Francisco 5s, 1950	$6,214.45
5,000.00	Public Service of Northern Illinois 5s, 1956	4,825.69
10,000.00	Consolidated Gas, Electric Light & Power 4½s, 1935	9,502.50
10,000.00	Great Western Power Company 5s, 1946	9,102.78
3,000.00	Atlanta and Charlotte 5s, 1944	3,021.25
1,000.00	General Electric 6s, 1920	1,001.83
15,000.00	State of Massachusetts Coupons 3½s, 1948	13,702.00
30,000.00	City of Cambridge 4½s, 1921-1927	30,796.20
10,000.00	City of Chicopee Coupons 4¼s, 1930	10,207.85
25,000.00	Federal Land Bank 4½s, 1937	25,293.75
50,000.00	United States Liberty Loan 4s	50,000.00
112,000.00	United States Liberty Loan 3½s	112,000.00
65,000.00	Canadian Gasoline Corporation, Ltd.	
5,000.00	Gasoline Corporation—Common	45,000.00
5,000.00	Gasoline Corporation—Preferred	

Notes Receivable

10,000.00	*Guy Murchie	10,000.00
15,000.00	*Guy Murchie	15,000.00
5,000.00	*Guy Murchie	4,586.67
1,000.00	Flexner Taylor Company	1,000.00
400.00	Sarah H. Welch	400.00
125.00	Consolidated Construction Company	125.00
Total		$351,779.97

*Collateral—285,000 Shares of Canadian Gasoline Corporation, Ltd.

[fol. 144] Exhibit A—Schedule No. 2

Capital Accounts May 31, 1918

Wipeclo Mills Capital

Debits

Purchases	$1,178,510.30
Cost of Chartering Two Steam Ships	108,624.67
Forwarding Expenses	608,955.51
Insurance	146,306.52
Commissions and Allowances	5,225.63
General Expenses	7,656.19
Salaries	8,751.85
Richard Mayer Salary—30 Weeks @ $116.85	3,505.50
Traveling Expense	7,428.48
Legal Expense	4,492.35
Extra Compensation—Leon R. Rowe	8,300.00
Extra Compensation—M. Eisemann	500.00
Cash Paid L. Stadeker	8,125.00
Cash said to have been Deposited to Credit of Mendelson & Company	300,000.00
Richard Mayer Company—"Cancellation of Entry".	*100,000.00
Loss on Securities	17,136.70
Balance	397,185.34
Total	$2,910,704.04

Credits

Cash Received from Wipeclo Mills		$2,078,202.72
Sales—Domestic		301,019.18
Receipts on Account of Seizures Made by British Authorities:		
From Insurance Companies	$411,140.97	
From United States Treasury Department on Account War Risk	62,595.03	
		473,736.00
[fol. 145] Interest Received		27,442.17
Richard Mayer—Personal, Transfer of Funds to Germany		208.97
Richard Mayer Company		*20,000.00
Richard Mayer Company		10,000.00
Transfer of Funds to Hans Jaegar		95.00
Total		$2,910,704.04

*See Comments.

Reis and Company (Boston) Capital

Debits

Cash Paid to Reis and Company	$90,315.53
War Risk a/c S. S. Negus	1,050.00
Balance	117,003.14
Total	$208,368.67

Credits

Cash Received from Reis and Company	*$176,920.50
Purchases	11,448.17
Cash through Richard Mayer Company	20,000.00
Total	$208,368.67

Summary

Balance of Wipeclo Mills Capital	$397,185.34
Balance of Reis and Company's Capital	117,003.14
Total	$514,188.48

PLAINTIFF'S EXHIBIT 5

Haskins & Sells, Certified Public Accountants, 30 Broad Street New York

Cable Address "Hasksells"

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21705: Richard Mayer Company, Boston, Mass.

DEAR SIR: Pursuant to engagement, we have made an examina-
[fol. 146] tion of the books, accounts, and records of Richard Mayer Company, 200 Summer Street, Boston, Massachusetts, and submit herewith ten pages of comments and the following described exhibits and schedules:

Exhibit "A"—General Balance Sheet, May 31, 1918, and October 10, 1914, and Comparison.
Schedule #1—Investments.

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*See Comments.

Exhibit "B"—Statement of Income and Profit & Loss, by Periods, from October 10, 1914, to May 31, 1918, as Shown by the Unaudited Book Figures.
"C"—Statement of Suplus Account to May 31, 1918.
"D"—Journal Entries Necessary to adjust the Books and Harmonize them with Exhibit "A," May 31, 1918.

Yours truly, Haskins & Sells.

Received at New York Office.

Richard Mayer Company Boston, Massachusetts

Comments on the Examination

Historical

During the period covered by our investigation, from 1911 to May 31, 1918, the following businesses were being conducted from the same office and with practically the same employes:

Reis and Company:

This firm had been in business several years prior to 1911 and is said to have wound up its business in 1915 or 1916.

There are no records available but it would appear that the Richard Mayer Company—Export Department is the successor.

Richard Mayer Company—Export Department from December, 1914, to May 31, 1918:

The only activities of moment were recorded between December, 1914, and April, 1915, during which period it was buying large quantities of cotton and linters for shipment abroad.

[fol. 147] Richard Mayer, as a private business from July, 1911, to June 30, 1913.

Richard Mayer, as a department of Reis and Company from July, 1913, to October 10, 1914.

Richard Mayer Company, from October 10, 1914, to May 31, 1918.

The Richard Mayer Company was organized on October 8, 1914, under authority of Chapter 437 of the Acts of 1903, Commonwealth of Massachusetts, with principal office in the City of Boston, Massachusetts.

The capital stock originally authorized consisted of 500 shares of common stock of a par value of $100.00 per share.

The first meeting was held on October 8, 1914, at which there were present the following incorporators:

Leon R. Rowe	Subscribing for	1	Share
Julius Laible	"	1	"
Maurice Eisemann	"	1	"
L. J. Madigan	"	1	"
W. F. Brennan, Jr.	"	1	"

At this meeting the following officers were elected:

President, Leon R. Rowe, Vice-President, Maurice Eisemann, Treasurer, Julius Laible; also all of the incorporators were elected directors.

The minutes of this meeting recite that:

"The President then presented a communication from Richard Mayer proposing to sell certain property to the corporation in exchange for the entire capital stock of the Company remaining after the subscription as aforesaid by the incorporators. Thereupon, after discussion, the following resolution was unaimously adopted."

"Whereas Reis and Company, of Heidelberg, Germany, desire to sell so much of their business as is now conducted under the Richard Mayer Department, so called, of said company, and, to that end, propose to sell, assign, transfer and deliver to this company, merchandise, consisting of cotton and wool waste and other textile fibres now in various warehouses in Boston and elsewhere, [fol. 148] which has been truly inventoried at the sum of thirty two thousand, five hundred dollars ($32,500.00) and desire to subscribe in cash for the capital stock of this company in excess of said thirty two thousand, five hundred dollars ($32,500.00) that is to make up the total amount of fifty thousand dollars ($50,000.00) par value, less five shares already subscribed for, all of the above to be in exchange for the capital stock of this company, as aforesaid, to be issued full paid and non-assessable."

We inquired for the "communication" mentioned in the first above quoted paragraph and were informed that such a document was not in existence and that it probably was a verbal offer.

Mr. Richard Mayer was in Germany at the time this Company was formed.

The capital stock amount in the ledger shows the following entries all dated as of October 10, 1914:

Reis and Company	Cash	$17,000.00
L. R. Rowe	"	100.00
J. Laible	"	100.00
M. Eisemann	"	100.00
L. J. Madigan	"	100.00
W. F. Brennan, Jr.	"	100.00
Wool Waste	"	23,295.41
Cotton Waste	"	9,204.59
Total		$50,000.00

Of the five incorporators, Messrs. Rowe, Madigan, and Brennan were employes of the Richard Mayer Department while Messrs. Laible and Eisemann were employed by Reis and Company.

On October 8, 1914, the following stock certificates were issued:

#1. Reis and Company	495	Shares.
2. Julius Laible	1	"
3. Leon R. Rowe	1	"
4. Maurice Eisemann	1	"
[fol. 149] 5. L. J. Madigan	1	"
6. W. F. Brennan, Jr.	1	"
Total	500	Shares.

On June 1, 1915, certificate No. 1 (issued to Reis and Company) was canceled and certificate No. 9 for 495 shares issued to Richard Mayer.

Certificate No. 2 was endorsed in blank and the share represented therein was reissued on certificate No. 12 on January 28, 1916, to J. L. Flatau.

Certificate No. 3 was endorsed in blank and the share represented therein was reissued on certificate No. 16, on September 26, 1916, to Richard Mayer.

Certificate No. 4 was endorsed to Richard Mayer on November 17, 1914, and certificate No. 7 issued in lieu thereof.

Certificate No. 5 was endorsed in blank on March 28, 1916, and the share represented therein was issued on certificate No. 14 to George H. Hurd, who in turn endorsed it to Henry Chanin on certificate No. 17. Certificate No. 17 was endorsed in blank and reissued on January 17, 1918, to Charles E. Hicks, on certificate No. 18. Certificate No. 18 has not been detached from the stub, but is endorsed in blank.

Certificate No. 6 was endorsed in blank on February 1, 1916, and certificate No. 13 was issued to Richard Mayer in lieu thereof.

To sum up the disposition of the original issue of 500 shares the following persons are the present holders of record:

Richard Mayer	498	Shares.
J. L. Flatau	1	"
Chas E. Hicks (Certificate in Book—Endorsed)	1	"
Total	500	Shares.

At a meeting of Directors held on November 16, 1914, Richard Mayer was elected Treasurer and Vice-President.

At this point the minute book was mutilated by the tearing out of pages 23 and 24.

[fol. 150] At a special meeting of the Board of Directors held on April 10, 1915, it was recommended that the capital stock be increased by the issue of five hundred additional shares of the par value of $100.00 per share.

This recommendation was adopted at a special meeting of the stockholders, held on same day, and the Treasurer was authorized "to sell for cash, at not less than par, to such person or persons as he may deem proper, five hundred shares of capital stock of a par value of $100.00 per share."

The Capital Stock account shows the receipt of $50,000.00 cash from Reis and Company on April 10, 1915.

On the same date, certificate No. 8 was issued for 500 shares to Reis and Company and on June 1, 1915, it was canceled and certificate No. 10 was issued in the name of Richard Mayer.

At special meetings of the Board of Directors and Stockholders, held on June 5, 1915, it was voted to further increase the capital by the issuance of 1,000 shares of a par value of $100.00 per share.

The Capital Stock account shows a receipt of $100,000.00 in cash from Reis and Company on June 5, 1915.

Certificate No. 11 was issued on June 8, 1915, in the name of Richard Mayer for 1,000 shares.

The total outstanding capital stock at May 31, 1918, was held as follows:

Richard Mayer	1,998	Shares.
J. L. Flatau	1	"
Charles E. Hicks (Certificate in Book—Endorsed)	1	"
Total Issue	2,000	Shares.

We understand that since May 31, 1918, the certificates represented above have been canceled, and new certificates for the 2,000 shares issued to representatives of the Alien Property Custodian.

On January 29, 1916, Richard Mayer was elected President.

At the annual meeting of stockholders held on December 13, [fol. 151] 1916, it was voted to liquidate the business of the Corporation in the usual manner, but this action was rescinded at a special meeting held on March 3, 1917.

Reis and Company of Heidelberg, Germany, had an established business in Boston for several years prior to the incorporation of the Richard Mayer Company from 1909 to June 30, 1913, at which latter date Richard Mayer claims to have been admitted to partnership in Reis and Company. Julius Laible and Maurice Eisemann were joint managers of the Boston business. Mr. Laible is now Treasurer of the Anglo-American Cotton Company and Mr. Eisemann is Sales Manager of the Richard Mayer Company.

When Richard Mayer became a partner with Reis and Company, as claimed, the books of Reis and Company were taken to the office of Richard Mayer and the business of Reis and Company was carried on concurrently with that of Richard Mayer and other allied businesses from July 1, 1913, until, as is claimed, a liquidation was brought about in 1915 or 1916.

We are informed that the books, records, and correspondence pertaining to the Reis and Company business were removed and destroyed during the summer of 1917.

Richard Mayer conducted a business in Boston from July 1, 1911, at which date, the books show, he started with a capital of $26,000.00, until October 10, 1914, at which date the Richard Mayer Company was incorporated.

The cash and merchandise assets accumulated to October 10, 1914, appear to the amounts which were given in payment of the

original issue of 500 shares of capital stock of the Richard Mayer Company.

It would thus appear that it was this business which was referred to as, "so much of Reis and Company's business as is now conducted under the Richard Mayer Department, so called, of said company" in the offer of purchase and sale as previously quoted in these comments.

From July 1, 1911, to June 30, 1913, Richard Mayer was credited [fol. 152] on his books with a nominal weekly salary of $50.00 to $75.00 per week.

We do not find any credits to Mayer or charges to the salary account on account of Mayer's salary from July 1, 1913, to the date of the incorporation of the Company. In explanation of this, Richard Mayer says that his recollection is, that as he was a partner, he had a drawing account of $116.00 per week which was charged on the books of Reis and Company, which have disappeared.

During the time that Richard Mayer's business and Reis and Company's business were being conducted concurrently, we find on the books of Richard Mayer an account with Reis and Company. This account shows principally purchases and sales of merchandise and borrowings and repayments of loans. There are, however, several journal entries shown whereby Reis and Company is credited and "Salary Account" is debited with a "proportion of Richard Mayer's salary." In the absence of the Reis and Company's records we are unable to judge as to the significance of these entries.

The business of Reis and Company (outside of that conducted as Richard Mayer) was, we are informed, wound up in the year 1915. We are of the opinion, that there was no liquidation of the affairs of Reis and Company, as claimed, but that the business of the Richard Mayer Company—Export Department *ment* is, in fact, a continuation of said business. Mr. Laible informs us that they could not obtain credit and in order to protect the funds on hand, the total amount being something over $10,000.00, they were transferred to the Beacon Trust Company in the early part of 1915, under the name of Laible & Rowe. Ten thousand dollars of these funds were later withdrawn and used for the purchase of capital stock of the Anglo-American Cotton Company.

The volume of the business done by Reis and Company at the Boston office cannot be ascertained, owing to the destruction of the books, but we are informed that the business at that time was [fol. 153] small, due principally to the fact that they could not obtain credit to any extent, either here or abroad.

Assets

Cash $29,924.32

The cash on hand amounting to $200.00 was counted and that on deposit was verified by certification obtained from the First National Bank of Boston.

Investments $292,974.82

This represents the book value of the securities as listed on Schedule #1. We examined the last three enumerated items and

have received from Lee, Higginson & Company a certification to the effect that they have in their custody the United States 4¼% Liberty Loan and the State of Massachusetts Bonds.

Notes Receivable $270.00

The notes receivable consist of the unpaid balances of three demand notes, made by Henry Chanin, a former employe of the Company, and his brother. We are informed that this amount is good and collectible.

Accounts Receivable $73,939.34

The details of these accounts as shown by the subsidiary ledger agree in total with the controlling account. All of them appear to be current except as follows:

Gustav Ely $3,670.51

A resident of Germany, said to be an employe of Reis and Company, the account being guaranteed by Richard Mayer personally.

Scranton Textile Co. 3,613.67

This Company is being operated by a receiver. The reserve for doubtful accounts is considered ample to care for any loss that may be sustained.

Richard Mayer $21,500.00

This amount represents the balance to the debit of Richard Mayer on the books of the Company. Mr. Mayer was in the habit of investing funds of the Company in his own name and then turning [fol. 154] the securities over to the Company. Of this amount $18,000.00 is collectible from Richard Mayer personally and $3,000.00 from the Richard Mayer—Export Department.

Merchandise $41,281.61

The amount of merchandise on hand was taken from a system of perpetual inventory cards. We examined the records since last inventory date and compared entries with the original data. The prices are cost or market, whichever was lower on May 31, 1918.

Furniture and Fixtures $1.00

The total amount expended for furniture, as shown by the books, was $1,110.57. There have been written off to Profit & Loss $1,109.57, leaving the balance as shown.

Liabilities

Accounts Payable $14,909.84

In addition to the accounts payable, as shown by the ledger, there are included in the above total, sundry small liabilities which were not on the books at May 31, 1918.

Taxes Accrued $2,381.93

This amount is made up as follows:

Federal Income Tax, Error in Return, at December 31, 1915	$212.33
Federal Income Tax, Estimated to May 31, 1918	632.56
Massachusetts Franchise Tax, Estimated to May 31, 1918	1,239.76
Massachusetts Corporation Income Tax, Estimated to May 31, 1918	297.28
Total as above	$2,381.93

Capital Stock $200,000.00

Particulars, of the issuance of and the payment for the capital stock, have been presented earlier in these comments.

Surplus $244,139.78

A detailed statement of the surplus account, showing the earn-
[fol. 155] ings by calendar years and our adjustments of the book figures, is shown on Exhibit "C."

The earnings for the year ended December 31, 1917, of $29,727.93 less Federal Income Tax paid would leave a net taxable surplus at June 30, 1918, of $27,405.58. On May 9th the Company subscribed and paid for $28,000.00 of United States Liberty Loan 4¼% Bonds.

We find that the earnings of the Company, for the year ended December 31, 1915, were $99,064.61 and that they reported $77,-831.52. To correct this we have prepared Journal Entry No. 4, setting up a liability of $212.33.

General

From July, 1915, to October, 1916, Richard Mayer was in receipt of a weekly salary of $116.85 and from October, 1916, to May 31, 1918, he received a weekly salary of $150.00. So far as the books show he did not participate in any profit sharing nor were there any other sums paid to him. Prior to July, 1915, he was receiving a weekly salary from the Richard Mayer—Export Department.

Maurice Eisemann was in receipt of a weekly salary of $60.00 from June, 1915, to October 1, 1916. On October 1, 1916, a contract was entered into between Richard Mayer Company and Maurice Eisemann whereby he was to receive $100.00 per week (payable $75.00 per week and the balance quarterly) together with 10% of the net profits to December 31, 1917.

This contract further recites:

"In case Richard Mayer should not be connected with the Richard Mayer Company at the end of the period of this agrement, then and then only, the inventory of the merchandise shall be taken as heretofore, to wit, cost price * * *."

Although this contract bears the imprint of the Company's seal, no authority for its execution is contained in the minutes.

There is no account with Reis and Company, of Heidelburg, appearing on the books.

[fol. 156]

Exhibit A

Richard Mayer Company, Boston, Massachusetts

General Balance Sheet May 31, 1918, and October 10, 1914, and Comparison

Assets

Current Assets:		May 31, 1918	October 10, 1914	Increase
Cash		$29,924.32	$17,500.00	$12,424.32
Investments—Schedule #1		292,974.82	.....	292,974.82
Notes Receivable		270.00	.....	270.00
Accounts Receivable—Trade:				
Debtors	$73,939.34			
Less Reserve for Doubtful Accounts	1,000.00			
		72,939.34	.....	72,939.34
Richard Mayer		21,500.00	.....	21,500.00
Advance to Employe for Account of Liberty Bond		49.00	.....	49.00
Merchandise		41,281.61	32,500.00	8,781.61
Total Current Assets		$458,939.09	$50,000.00	$408,939.09
Furniture and Fixtures—Nominal Value		1.00	.....	1.00
Insurance Premiums—Unexpired Portion		2,491.46	.....	2,491.46
Total		$461,431.55	$50,000.00	$411,431.55

General Balance Sheet—Continued

Liabilities

Current Liabilities:	May 31, 1918	October 10, 1914	Increase
Accounts Payable—Trade Creditors	$14,909.84	.....	$14,909.84
Taxes Accrued	2,381.93	.....	2,381.93
Total Current Liabilities	$17,291.77	.....	$17,291.77
Capital Stock	200,000.00	$50,000.00	150,000.00
Surplus	244,139.78	.....	244,139.78
Total	$461,431.55	$50,000.00	$411,431.55

Exhibit B.

STATEMENT OF INCOME AND PROFIT & LOSS BY PERIODS
FROM OCTOBER 10, 1914, TO MAY 31, 1918 AS SHOWN BY THE UNAUDITED BOOK FIGURES

	January 1, 1918, to May 31, 191		January 1, 1917, to December 31, 1917		January 1, 1916, to December 31, 1916		January 1, 1915, to December 31, 1915		Organization to December 31, 1914	
Sales,	$353,973.608		$1,230,131.21		$1,767,364.28		$1,336,397.45		$123,872.58	
Cost of Sales,	326,137.98		1,132,920.34		1,548,878.25		1,165,357.66		112,732.74	
Gross profit on Sales,		$27,835.62		$97,210.87		$218,486.03		$171,039.79		$11,139.84
Selling, Administrative, and General Expenses:										
Freight,	$ 890,40		$ 6,138.27		$ 15,618.05		$ 15,851.50		$ 305.71	
Drayage,	511.75		4,214.55		5,791.83		1,568.88			
Disbursement Account,	1,040.00		3,479.33		1,030.00					
Storage,	1,785.16		11,700.13		15,599.54		2,455.97			
Sales and Traveling Expenses,	1,368.70		5,561.57		7,233.04		11,507.96		70.58	
Salaries,	7,757.00		22,752.00		21,266.30		13,510.67		1,711.00	
Rent and Light,	1,057.05		2,593.86		3,748.91		479.54			
Telephone and Telegrams,	483.94		2,008.01		2,320.49		909.71			
Philadelphia Office,					3,225.32		6,524.30		940.81	
Insurance,	1,016.15		2,747.21		5,437.45		844.96			
Legal Expenses,	50.00		679.25		127.53					
Office Supplies,	22.06		521.01		969.83		149.27			
Postage,	124.24		623.67		852.51		195.10			
Sample Room Expenses,	8.37		82.95		379.76		75.14			
Carfare and Express,	26.9[illegible]		122.27		180.54		38.39			
Office Furniture,	6.70		2.00		1,097.95					
General Expenses,	1,847.42		2,491.82		8,826.02		13,060.64		809.50	
Brokerage,	37.50		590.29		961.38		366.01			
Taxes,	1,849.09		6,810.00							
Bad Debts,			2,344.32		824.83		3,933.12			
Total,		19,882.47		75,462.51		95,491.28		71,471.16		3,837.60
Net Profits on Sales,		$ 7,953.15		$21,748.36		$122,994.75		$ 99,568.63		$ 7,302.24
Additions to Income:										
Brokerage,					$ 929.50		$ 1,220.25			
Discounts Received,	$ 1,612.44		$ 5,650.07		11,284.73					
Interest Received,	1,643.70		7,430.91		3,021.30		379.27		$ 13.98	
Total,		3,256.14		13,080.98		15,235.53		1,599.52		13.98
Total Income,		$11,209.29		$34,829.34		$138,230.28		$101,168.15		$ 7,316.22
Deductions from Income:										
Interest,			$ 1,479.15		$ 2,649.78		$ 2,031.92			
Cash Discounts Allowed,	$ 2,432.76		7,445.52		14,892.97		71.62		$ 17.64	
Adjustment on Brokerage,					1,220.25					
Provision for Loss on Brown Contract,					3,350.00					
Total,		2,432.76		8,924.67		22,113.00		2,103.54		17.64
Net Income,		$ 8,776.53		$25,904.67		$116,117.28		$ 99,064.61		$ 7,298.58

[fols. 157 & 158] Exhibit A—Schedule No. 1

Richard Mayer Company, Boston, Massachusetts

Statement of Investments at May 31, 1918

	Par value	Book value
State of Massachusetts Registered Exempt 3½%, September, 1919.....	$50,000.00	$49,565.44
U. S. Liberty Loan 4¼%.....	28,000.00	28,000.00
City of Lowell, Massachusetts, Notes Due November 1, 1918.....	150,000.00	143,409.38
U. S. Treasury Certificates Due June 18, 1918, 4½%.....	72,000.00	72,000.00
Total.....	$300,000.00	$292,974.82

(Here follows Exhibit B, marked side folio pages 159 and 160.)

[fol. 161] Exhibit C

Statement of Surplus Account to May 31, 1918

Net Income—Organization to December 31, 1914....		$7,298.58
Net Income—January 1, 1915, to December 31, 1915.		99,064.61
Net Income—January 1, 1916, to December 31, 1916.		116,117.28
Net Income—January 1, 1917, to December 31, 1917.		25,904.67
Net Income—January 1, 1918, to May 31, 1918.....		8,776.53
		$257,161.67
Deduct Bonus paid to Maurice Eisemann May 6, 1918, being 10% of profits from October 1, 1916, to December 31, 1917.....		9,521.31
Total Surplus per the Books May 31, 1918....		$247,640.36
From which is deducted:		
Journal Entry #4, Income Tax for Year Ended December 31, 1915.....	$212.33	
Journal Entry #5, Taxes Due Commonwealth of Massachusetts.....	1,537.04	
Journal Entry #7, Estimated Income Tax January 1, 1918, to May 31, 1918.....	632.56	
Journal Entry #9, Liabilities not Entered on Books May 31, 1918.....	774.47	
Journal Entry #10, Difference between Book Value and Market Price of Inventory at May 31, 1918.....	1,328.00	
Total Deductions from Surplus.....		4,484.40
		$243,155.96

[fol. 162] And to which is added:

Journal Entry #6, Taxes Accrued on Books now Written Back	$583.82	
Journal Entry #8, Estimated Amount of Unpaid Accounts now Written Back	400.00	
Total Additions to Surplus		983.82
Total Adjusted Surplus, May 31, 1918		$244,139.78

Exhibit D

Journal Entries Necessary to Adjust the Books and Harmonize Them with Exhibit "A" May 31, 1918

No. 1

Accounts Receivable	$429.65	
To Accounts Payable		$429.65

For transfer of debit balances on accounts payable ledger

No. 2

Accounts Receivable	4.07	
To Accounts Payable		4.07

For transfer of credit balances on accounts receivable ledger.

No. 3

Richard Mayer	21,500.00	
To Accounts Receivable		21,500.00

For transfer from accounts receivable of amount due by Richard Mayer and Richard Mayer—Export Department, so that the amount will be set up as a Balance Sheet item.

No. 4

Surplus	212.33	
To Taxes Accrued		212.33

For setting up liability on account of Income Tax for the year ended December 31, 1915. The earnings as shown by the books [fol. 163] amounted to $99,064.61 and the amount returned was $77,831.52. This is based on 1% of $21,233.09.

No. 5

Surplus	$1,537.04	
To Taxes Accrued		$1,537.04

For setting up estimated liability to the Commonwealth of Massachusetts to May 31, 1918.

Corporation Franchise Tax	$1,239.76
Corporation Income Tax	297.28
Total	$1,537.04

No. 6

Taxes Accrued	583.82	
To Surplus		583.82

For writing back amount of taxes accrued on the books to May 31, 1918.

No. 7

Surplus	632.56	
To Taxes Accrued		632.56

For estimated amount of Income Tax due to May 31, 1918, being 6% of Net Profits plus 1917 Income Tax paid during period.

No. 8

Accounts Payable	400.00	
To Surplus		400.00

For reversal of estimated amount of unpaid accounts, not shown on the books at May 31, 1918.

No. 9

Surplus	774.47	
To Accounts Payable		774.47

For setting up actual liabilities for accounts payable, not entered on books at close of business on May 31, 1918, per list on file in office.

[fol. 164]

No. 10

Surplus	$1,328.00	
To Merchandise		$1,328.00

For reduction in book value of inventory at May 31, 1918, to bring prices to market value.

Plaintiff's Exhibit 6

Haskins & Sells, Certified Public Accountants, 30 Broad Street New York

Cable Address "Hasksells"

Received Aug. 5, 1918, Department of Sales.

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21074: Anglo-American Cotton Company, Boston, Mass.

Dear Sir: Pursuant to engagement, we have made an examination of the books, records, and accounts of the Anglo-American Cotton Company, 200 Summer Street, Boston, Massachusetts, for the period from June 10, 1915, to May 31, 1918, and submit herewith five pages of comments and the following described exhibits:

Exhibit "A"—General Balance Sheet, May 31, 1918, and June 10, 1915, and Comparison.
"B"—Statement of Income and Profit & Loss, by Periods, for the Period from June 10, 1915, to May 31, 1918.
"C"—Summary of Surplus Account to May 31, 1918.
"D"—Journal Entries Necessary to Adjust the Books and Harmonize them with Exhibit "A," May 31, 1918.

Yours truly, Haskins & Sells.

Received at New York Office.

[fol. 165] Anglo-American Cotton Company

Comments on the Examination for the Period from June 10, 1915, to May 31, 1918

Introductory

This Company was organized June 10, 1915, under authority of Chapter 437 of the Acts of the year 1903 of the Commonwealth of Massachusetts with a Capital of $50,000.00 represented by 500 shares of a par value of $100.00 each. The incorporators were J. E. McIntyre, Julius Laible and S. A. Noether.

At a meeting of the Board of Directors held on June 10, 1915, Julius Laible was elected President and Treasurer and Julius Laible, J. E. McIntyre and S. A. Noether were elected directors.

The Capital Stock was subscribed for as follows:

Julius Laible, Boston	498 Shares.
J. E. McIntyre, Boston	1 "
S. A. Noether, Boston	1 "
Total	500 Shares.

At a special meeting of the Board of Directors held on June 24, 1915, Julius Laible resigned as President and J. E. McIntyre was elected President in his stead.

The Stockholders of record at May 31, 1918, were as follows:

Number of certificate	Issued to	Number of shares
1.	Julius Laible	498
2.	S. A. Noether	1
3.	J. E. McIntyre	1
	Total	500

Certificates Nos. 4 to 50 are in the Certificate Book. The Cash Book entry showing the receipt of $50,000.00 paid in for Capital Stock does not indicate from whom the payment was received, but our investigation revealed that the proceeds of two checks aggregating $40,000.00, drawn by the Richard Mayer Company in favor of S. A. Noether, and the proceeds of a check for $10,000.00 of Reis [fol. 166] & Company were used to purchase the entire Capital Stock of the Company. The checks from the Richard Mayer Company were endorsed by S. A. Noether and by O. S. Bauer. The check from Reis & Company was in favor of O. S. Bauer and was endorsed by him. Among other reasons given for handling these transfers of funds in this manner, Mr. Laible informed us that it was intended to have it appear that no connection existed between the Richard Mayer Company and the Anglo-American Cotton Company.

Current Assets

Cash $22,677.09

The cash on deposit, $21,566.30, was verified by certification obtained from the First National Bank of Boston, and the cash on hand, $1,110.79, was counted.

Investments $5,000.00

This item represents the par value of United States Second Liberty Loan, 4% Bonds, owned by the Company.

Accounts Receivable $15,498.48

This item is composed of balances due from customers. We were informed that all accounts making up the above amount are considered collectible.

Julius Laible $1,933.33

On September 29, 1917, $1,500.00, representing the par value of the United States Liberty Loan Bonds then owned by the Company was written off and the bonds delivered to Julius Laible. We have written back $1,500.00, charging the amount to Julius Laible together with $433.33 covering salary paid in advance.

Merchandise $120,459.59

This item represents the merchandise owned by the Company and stored in various warehouses, as shown by the records. A schedule prepared from the Stock Cards of the Company and priced at cost, was furnished us. The mathematical calculations in the schedule were tested and the items appearing in the schedule were compared with the Company's stock records.

[fol. 167] Fixed Assets

Furniture and Fixtures..... $100.00

At various dates from its organization to January 31, 1917, the Company charged to the Furniture and Fixtures account the sum of $506.40. This amount was written off on May 31, 1917, and on September 29, 1917, $100.00 was written back from Loss and Gain.

Cadillac Limousine $3,000.00

In June 1917 the Company purchased a Cadillac Limousine for $3,150.00 and subsequently expended $834.70 for accessories increasing the cost of the automobile to $3,984.70. At the date of our examination the entire cost of the automobile had been written off. We have reinstated the asset at an estimated value of $3,000.00.

Current Liabilities

Notes Payable..... $50,000.00

This item represents two notes for $25,000.00 each, payable to the First National Bank of Boston. The notes are dated December 10, 1917, and April 24, 1918, and mature June 10, 1918, and July 24, 1918, respectively.

Accounts Payable $748.79

This item is composed of accrued expenses estimated at $748.79 for which bills had not been received at the date of our examination.

Past Due Taxes $1,058.37

This is the amount of the Federal Income and Excess Profits Taxes short paid for the year 1917, due to adjustments made by us in the income account for that year.

Accrued Taxes $2,094.12

This item represents an estimate of the Federal Income Tax on the earnings of the Company for the five months ended May 31,

1918, and the accrual of the taxes to be paid to the Commonwealth of Massachusetts.

General

The principal business of the Company has been the purchase and [fol. 168] sale of cotton waste to manufacturers and other dealers in the United States. The only transactions noted with foreign customers were as follows: Sales of cotton waste on October 20, 1916, and March 3, 1917, amounting to $3,558.80 and $5,663.60 respectively. The first shipment was lost in transit, on the S/S Columbia and the Company was reimbursed by the insurers, through Despard & Company of New York, to the extent of $3,600.00. During the years 1916 and 1917 the Company jointly with its President, J. E. McIntyre, as an individual, made sales of quebracho extract aggregating approximately $73,000.00 including a shipment valued at $27,714.96 to A. Magnus & Company of Gothenburg, Sweden. The entry recording this sale appears in the Company's ledger under date of March 31, 1916.

The Company's Cash Book shows that on April 14, 1917, there was received from the American Express Company $989.60 and that a like amount was disbursed to the same Company on April 12, 1917. Investigation showed that the remittance of $989.60 referred to was not received from the American Express Company but from the Richard Mayer Company—Export Department. Examination of the Company's correspondence files revealed that the Company transferred Fes. 5,000 by cable to the Park Hotel, Lugano, through the American Express Company. The recipient of these funds appears to have been Charles Strauss whom we assume is the Karl B. Strauss referred to in the Anglo-American Cotton Company's report to the Alien Property Custodian, as a member of the partnership of Reis & Company of Heidelberg, Germany.

At a special meeting of Stockholders and Directors held December 24, 1917, the following resolution was adopted:

"That J. Laible as Treasurer and Director of the Corporation in consideration of services rendered to the Corporation receive and draw the equivalent of 15% of the surplus of the Corporation, the arrangement to hold good until cancelled by mutual consent of those present at this meeting."

It was also unanimously voted:

[fol. 169] "To distribute at the discretion of the Treasurer the equivalent of 15% of the earnings of the Corporation beginning with October 1, 1917, amongst the employes and officers of the Corporation to take the place of a profit sharing plan."

Salaries, Profit Participations, etc.

The following salaries, profit participations, etc., were paid or allowed to officers and employes:

Julius Laible, Payments on Account of Salary:

June 10 to December 31, 1915	$725.00	
January 1 to December 31, 1916	2,975.00	
" Additional	1,975.00	
January 1 to December 31, 1917	2,925.00	
" Additional	2,925.00	
January 1 to May 31, 1918	2,691.67	
Total Salary	$14,216.67	
Credit—May 6, 1918—Per Exhibit "C"	11,428.49	
Total		$25,645.16

S. A. Noether, Payments on Account of Salary:

June 10 to December 31, 1915	$472.50	
January 1 to December 31, 1916	1,560.00	
January 1 to December 31, 1917	1,842.50	
January 1 to May 31, 1918	1,050.00	
Total		4,925.00

Salesmen and Office Employes, Payments on Account of Salaries:

June 10 to December 31, 1915	$1,317.00	
January 1 to December 31, 1916	2,988.50	
January 1 to December 31, 1917	4,551.00	
January 1 to May 31, 1918	2,106.00	
Total		10,962.50

J. E. McIntyre, Credits:

⅔ of Profits of Quebracho Shipments	$8,075.14	
[fol. 170] Commissions on Yarn Sales	4,060.00	
Total		12,135.14
Total		$53,667.80

There does not appear to be any enemy debtors or creditors at May 31, 1918.

Exhibit A

Anglo-American Cotton Company

General Balance Sheet, May 31, 1918, and June 10, 1915, and Comparison

Assets

		May 31, 1918	June 10, 1915	Increase or *decrease*
Current Assets:				
Cash		$22,677.09	$50,000.00	*$27,322.91*
Investments		5,000.00	.....	5,000.00
Accounts Receivable—Trade		15,498.48	.....	15,498.48
Julius Laible		1,933.33	.....	1,933.33
Merchandise		120,459.59	.....	120,459.59
Total Current Assets		$165,568.49	$50,000.00	$115,568.49
Fixed Assets:				
Furniture and Fixtures	$100.00			
Cadillac Limousine	3,000.00			
Total Fixed Assets		3,100.00	.....	3,100.00
Total		$168,668.49	$50,000.00	$118,668.49

General Balance Sheet—Continued

Liabilities

Current Liabilities:	May 31, 1918	June 10, 1915	Increase or *decrease*
Notes Payable	$50,000.00	.....	$50,000.00
Accounts Payable—Trade	748.79	.....	748.79
Past Due Taxes	1,058.37	.....	1,058.37
Accrued Taxes	2,094.12	.....	2,094.12
Total Current Liabilities	$53,901.28	.....	$53,901.28
Capital Stock	50,000.00	$50,000.00	.....
Total Liabilities	$103,901.28	$50,000.00	$53,901.28
Surplus	64,767.21	.....	64,767.21
Total	$168,668.49	$50,000.00	$118,668.49

(Here follows Exhibit B, marked side folio pages 171 and 172)

Exhibit B.

STATEMENT OF INCOME AND PROFIT & LOSS BY PERIODS FOR THE PERIOD FROM JUNE 10, 1915 TO MAY 31, 1918

	January 1, 1918 to May 31, 1918		January 1, 1917 to December 31, 1917		January 1, 1916 to December 31, 1916		June 10, 1915 to December 31, 1915	
Sales,	$199,011.36		$470,369.68		$766,599.39		$291,154.62	
Cost of Sales,	177,138.27		421,281.26		711,532.37		252,174.99	
Gross Profit on Sales,		$21,873.09		$49,088.42		$55,067.02		$38,979.63
Expenses:								
Forwarding,	$ 4,098.72		$ 10,020.13		$ 5,009.28		$ 1,741.62	
Salaries,	5,847.67		12,243.50		9,498.50		2,514.50	
Traveling,	688.04		2,947.65		1,826.17		282.02	
Insurance,			410.50		2,403.83		485.14	
Commissions,	*160.00*		384.50		49.68		696.75	
Automobile,			984.70					
General,	3,703.44		5,955.22		3,971.93		1,709.92	
Total,		$14,177.87		$32,946.20		$22,759.29		$ 7,429.95
Net Profit on Sales,		$ 7,695.22		$16,142.22		$32,307.63		$31,549.68
Other Income:								
Discount Received,	$ 1,172.11		$ 2,859.26		$ 3,200.92		$ 217.49	
Interest Received,							377.23	
Profit on Joint Account with J. E. McIntyre,			379.32		3,326.05			
Total		1,172.11		3,238.58		6,526.97		594.72
Gross Income,		$ 8,867.33		$19,380.80		$38,834.60		$32,144.40
Deductions From Income:								
Interest Paid,	$ 525.22		$ 2,018.70		$ 12.66			
Taxes,	2,094.12		1,947.00					
Losses on Cotton Transactions,					14,968.96			
Furniture and Fixtures,			406.40					
Total,		2,619.34		4,372.10		14,981.62		Nil
Net Income for Period,		$ 6,247.99		$15,008.70		$23,852.98		$32,144.40

[fol. 173] Exhibit C

Summary of Surplus Account to May 31, 1918

Net Income,	June 10, 1915, to Dec. 31, 1915		$32,144.40
"	Jan. 1, 1916, to Dec. 31, 1916		23,852.98
"	Jan. 1, 1917, to Dec. 31, 1917		15,008.70
"	Jan. 1, 1918, to May 31, 1918		6,247.99
Total			$77,254.07
From which is deducted:			
Credit to Julius Laible, Allowed May 6, 1918, being 15% of Surplus on May 1, 1918, in Accordance with Resolution Adopted at Meeting of Stockholders and Directors on December 24, 1917		$11,428.49	
Journal Entry #5—Additional Corporation Income and Excess Profits Due for Year Ended December 31, 1917 ..		1,058.37	
Total Deductions			12,486.86
Surplus May 31, 1918, after Adjustments			$64,767.21

Exhibit D

Journal Entries Necessary to Adjust the Books and Harmonize Them With Exhibit "A" May 31, 1918

No. 1

J. Laible	$1,500.00	
To Loss and Gain		$1,500.00

To offset charge to Loss and Gain September 30, 1917, when Liberty Bonds were written off and bonds delivered to J. Laible.

No. 2

J. Laible	433.33	
To Salary Account		433.33

To charge to J. Laible salary paid in advance.

[fol. 174] No. 3

Merchandise	202.00	
To Adams Express Company		202.00

To reverse charge to Adams Express Company on account of shipment lost in transit. Charge to customer is still in effect.

No. 4

Cadillac Limousine	3,000.00	
To Surplus		3,000.00

To write back at estimated value of $3,000.00 a Cadillac Limousine purchased in June, 1917.

No. 5

Forwarding Expenses	$566.62	
General Expenses	182.17	
To Accounts Payable		$748.79

To set up liability for storage charges, rent, telephone service, etc., for which bills had not been received on May 31, 1918.

No. 6

Surplus	1,058.37	
To Past Due Taxes		1,058.37

To set up liability for Corporation Income and Excess Profits Taxes short paid for year ended December 31, 1917.

No. 7

Forwarding Expenses	40.01	
To Warehouse Bills		40.01

To transfer debit balance.

No. 8

Taxes		2,094.12	
Massachusetts Income	$150.09		
Massachusetts Franchise	1,500.00		
Federal Income	444.03		
Total	$2,094.12		
To Accrued Taxes			2,094.12

Estimated accrual of taxes for five months ended May 31, 1918.

Translation of Private Account of Richard Mayer in Herzberg

1918				1915			
Dec. 31.	Transfer from General acct.	M	170987.48	Dec. 31.	By share business capital per page 41, private ledger	M	20000.00
"	" Book I Straw Food Railway siding		9450.00	"	Share Machinery & Buildings, per page 41, of private ledger		49987.49
"	" Reis & Co.		162000.00	1916			
"	" " "		27000.00	Dec. 31.	Transfer private ledger Machinery & Buildings		37029.62
							107017.11
				1917			
				Dec. 31.	Transfer private ledger page 42, Mach. & Bldgs.		28982.89
				"	Transfer private ledger page 42, Mach. & Bldgs.		29487.48
				"	Transfer private ledger page 42, Capital Share		5500.00
				"	Participation in loss of Ludwig Reis' share 1917		3256.91
				1918			
				Dec. 31.	Transfer from General Acct. Share in business		27000.00
				"	Transfer from General Acct. for extensions		153343.09
				"	Transfer from Book I, Extraction plant...		1350.00
				"	Transfer from Book I, Land		13500.00
		M	369437.48			M	369437.48

Translation of Private Account of Richard Mayer in Cleaning Waste Factory

1921			1920		
Dec. 31.	Transfer from Reis & Co.	M 66228.77	Dec. 31.	Capital Acct.	M 80000.00
"	Balance forward	237151.74	"	Rest share in profits 20%	66228.77
			1921		
			Dec. 31.	" " " " "	157151.74
		M 303380.51			M 303380.51
			1922		
			Jan. 1.	Balance forward	80000.00
			"	" "	157151.74 M 237151.74

Translation of Private Account of Richard Mayer in Reis & Company Friedrichsfeld

1913			1913		
Oct. 31.	Investment Kapok Dept	M 5000.00	July 1.	By Investment in Firm as per Inventory...	M 206054.02
Dec. 31.	To Balance	219708.05	Dec. 1.	" Interest on Capital	3863.50
			" 1.	" 20% Participation of Net Profit for 5 mos.	14790.53
		M 224708.05			M 224708.05

[fol. 176]

1914			1914		
May 31.	To withdrawals as per Dec. 1, 1913 (Balance of private account)	3578.25	Dec. 1.	By Balance carried forward	219708.05
1915			1915		
Dec. 31.	" Balance of private a/c	6994.27	Dec. 22.	" $870.35	3578.25
" 31.	" 20% participation Herzberg	20000.00			
" "	" 20% participation Algersdorf Kr. 20,000	13400.00			
" "	" Participation Richard Mayer Co.	51039.18			

"	"	" Participation Herzberg Machinery & Buildings	49987.49		
"	"	" Balance	78287.11		
			M 223286.30		M 223286.30

1916

1916

June	9.	To Payment Algersdorf Kr. 32,000	22288.00	Jan.	1.	By Balance carried forward	78287.11
	17.	" " " Kr. 16,000	12000.00	"	"	" Interest on Capital	19800.00
Dec.	31.	" Transfer from Private account	276.50	"	"	" Share in profits	820584.94
	"	" Interest Private acct	60.00	"	"	" Adjustment of interest on capital	1300.00
	"	" Transfer from Herzberg Machinery & Buildings	37029.62	Dec.	31.	" Adjustment of interest on capital 1916.	40549.26
	"	" M 50,000 4½% Treasury Bonds	47500.00	"	"	" Share in profits Algerdorf 1915	618.31
	"	" M 380,000 5% War Loan	372400.00	"	"	" Share in profits Algerdorf 1916	179509.26
	"	Balance	649094.76				
			M1140648.88				M1140648.88

1917

1917

Dec.	31.	Increase in Capital Algersdorf Kr. 60,000.	38400.00	Jan.	1.	Balance carried forward	649094.76
	"	War Profit taxes	266432.40	Aug.	11.	Return of Treasury Bonds M 50,000	47500.00
	"	Share Herzberg Machinery & Buildings	28982.89	"	11.	Return of War Loan M 380,000	372400.00
	"	Transfer from Private Acct	3959.15	Dec.	31.	Share profit Algersdorf 1916	1105.12
	"	Balance	843421.45	"	31.	Interest on Capital	29209.50
				"	31.	Share profit 1917	81886.51
			M1181195.89				M1181195.89

1918

1918

July	10.	Capital Share L. R. Algersdorf Kr. 49,500 value 1/1/18	31680.00	Jan.	1.	Balance carried forward	843421.45
	10.	Share L. R. Herzberg Machinery	29487.48	"	"	Share profit Algersdorf 1917	5184.00
	10.	Share Capital L. R. Herzberg	5500.00			Transfer to Private acct	28794.22
Dec.	31.	Withdrawal of Bonds	456490.04			Herzberg Straw Food Railroad connection	9450.00
	"	Herzberg building of Extractors	1350.00			Share U. S. A	27
	"	Herzberg land	13500.00			Share Algersdorf	54675.00
	"	Share of Loss 1918	69650.96			" Herzberg	162000.00
	"	Carried forward	522866.46			" Herzberg stock	27000.00
			M1130524.94				M1130524.94

Translation of Private Account of Richard Mayer in Reis & Company Friedrichfield—Continued

[fol. 177]

1919			1919		
Dec. 31.	Carried forward from Private account...	M 46210.09	Jan. 1.	Carried over from Balance Sheet.....	M 522866.46
"	Minus	18064.76	"	Return of Bonds.....	456490.04
		28145.33	Dec. 31.	4½% Interest 1919.....	44071.04
"	Withdrawal of bonds.....	457650.00	"	Share of Profit 1919.....	348827.92
"	Balance	886460.13			
		M1372255.46			M1372255.46
			1920		
			Jan. 1.	Carried forward.....	886460.13
			"	Return of bonds.....	457650.00
			Dec. 31.	Transfer from Private acct.....	3244.00
			"	5% interest Capital 1920.....	67205.50
			"	Share of profits 1920.....	305364.70
1921			1921		
Dec. 31.	Withdrawals	14309.00	Jan. 1.	Carried over from Balance Sheet.....	1719924.33
"	Balance of accounts.....	2581279.95	"	Transfer Wiping Waste Factory 1920.....	66228.77
			"	Transfer Kapok Factory 1920.....	96908.70
			Dec. 31.	5% interest Capital 1921.....	94153.90
			"	Share profit 1921.....	618373.25
		M2595588.95			M2595588.95
			1922		
			Jan. 1.	Carried over from Balance Sheet.....	M2581279.95

Translation of Private Account of Richard Mayer in Algersdorf

1918		1915	
Dec. 31. Transfer General Acct.	Kr. 229500.—	Dec. 31. Share in Business Capital, page 41, private ledger	Kr. 20000.—
		1916	
		June 9. Payment Algersdorf, increase capital, page 41 private ledger	32000.—
		" 17. " " "	16000.—
		1915	
		Dec. 31. Increase of Capital	12000.—
		1916	
		Dec. 31. " " "	40000.—
		1917	
		Dec. 31. " " " per private ledger, page 42	60000.—
		1918	
		Dec. 31. Share Ludwig Reis	49500.—
	Kr. 229500.—		Kr. 229500.—
1918		1918	
Dec. 31. Transfer Reis & Co.	Kr. 243000.—	Dec. 31. Transfer general account	Kr. 243000.—

1917				1916			
Dec. 31.	Transfer from Private acct. Reis & Co...	M	3291.72	July 1.	Participation	M	17417.55
1918				Dec. 31.	Share in profits & interest.....		10136.41
Nov. 30.	" " ...		5585.10	1917			
Dec. 31.	" " ...		900.00	July 1.	" " " "		10790.77
	Balance		58064.76	Dec. 31.	" " " "		4946.99
				1918			
				July 1.	Interest first half year.....		900.00
				Dec. 31.	" second " "		900.00
					" Share in profits 1918.....		22749.86
		M	67841.58			M	67841.58
1919				1919			
Dec. 31.	Transfer private acct. Reis & Co.....	M	18064.76	Jan. 1.	Capital Investment		40000.00
	" Balance		78998.74		Share profit 1918.....		18064.76
				Dec. 31.	" " 1919.....		38998.74
		M	97063.50			M	97063.50
1920				1920			
Nov. 24.	Transfer private acct. Reis & Co.....	M	38998.74	Jan. 1.	Balance forward.....	M	78998.74
				Dec. 31.	Capital acct. 20%.....		10000.00
					" Rest share in profits plus 5% interest.....		96908.70
1921				1921			
Dec. 31.	" " "		96908.70	Dec. 31.	Share in profits plus 5% interest.....		86090.43
	" Balance forward.....		136090.43				
		M	271997.87			M	271997.87
				1922			
				Jan. 1.	Balance forward.....	M	136090.43

Defendants' Exhibit IV

C A C D U Reis Co. Boston

1914				Rate
June 30	$6,000	M	25,200	4.20
July 17	3,000	"	12,600	4.20
Oct. 30	15,000	"	68,400	4.56
" 30	10,000	"	45,500	4.55
" 31	25,000	"	113,750	4.55
Nov. 20	25,000	"	117,062.50	4.68
Dec. 18	25,000	"	113,797	4.55
1915.				
Jan. 4	$50,000	"	228,500	4.57
" 22	100,000	"	740,220	4.70
" 30	100,000	"	468,180	4.68
Feb. 15	100 000	"	480,420	4.80
[fol 179] Feb. 16	$200,000	M	963,900	4.82
Mar. 4	200,000	"	984,000	4.92
" 10	100,000	"	490,000	4.90
" 12	100,000	"	485,000	4.85

After March, 1915, practically no remittances were cabled owing to the British embargo.

Defendants' Exhibit V

Translation from the German

Property—Revenue office—Schwetzingen.
War-tax list A, #119.
War-tax debit book, #119.

War-tax Notification for Individuals

To Mr. Richard Mayer, in Boston, partner and representative of manufacturer, Edwin Reis, Heidelberg, Germany:

According to the war tax law of June 21, 1916 the exceptional war tax plus extra charge to be paid by you amounts to 266,432.40 M. This amount has been established on ground of the following calculation:

Tax According to Paragraphs 9, #1

Property on which tax is based	783,650	M.
Deductions as per declaration	.....	
Remainder	783,650	M.
Additions as per declaration	.....	M.
Property as per paragraph 7 (round sum)	783,000	M.
Original property	127,000	M.
Increase of property, taxable according to paragraph 9, #1	656,000	M.
Tax	221,900	M.

[fol 180] Tax According to Paragraph 9, #1

Property on which tax is based	783,650	M.
Amount taxable	656,000	M.
Remainder	127,000	M.
Original property 127,360 M.		
Tax exempt		
Total (round sum) 127,000 M.		
Deducted 90 out of hundred	114,300	M.
Increase taxable	12,700	M.
Tax	127	M.
Tax as per paragraph 9, #1 of Tax law	221,900	M.
Sum	222,027	M.
Extra charge as per statute of Apr. 9, 1917	44,405.40	M.
Total Tax	266,432.40	M.

The first payment, one third of the war-tax due, is to be paid within three months after receipt of the War-tax-notification, the other third has to be paid by Nov. 1, 1917 and the last third has to be paid by March 1, 1918 to the Revenue office Postal Check Account #1433, Karlsruhe. The tax-payer can pay the later instalments in advance if he wishes so.

Judgment notes, claims, treasury certificates and war bonds of the German Empire are accepted instead of cash payments. Such bonds or notes are to be sent together with the renewal certificates and coupons to the Badische Bank, Mannheim, or its branch in Karlsruhe, with the request to establish the value of the securities and to return to the sender a receipt about the number of securities turned in.

Complaints are to be made within 14 days from the day the war-tax notification has been delivered.

Through a complaint the instalments due are not to be held up by the taxpayer.

[fol. 181] Received 100,000 M.
Schwetzingen, Nov. 8, 1917. Revenue Office.
(Signature:) Leitsch.

Received 81,468.75 M.
Schwetzingen, Dec. 10, 1917. Revenue office.
(Signature:) Leitsch. Peter Weber, Translator.

JD.

Defendants' Exhibit VI

Translated from the German

Agreement Between, 1, the Firm Reis & Co., Lt., Heidelberg, and, 2, Mr. Gustav Ely, Heidelberg

1

Mr. Gustav Ely enters on July 1, 1913 a position with the firm Reis & Co. as collaborator and confidential Clerk.

2

Mr. Gustav Ely is running at present a cotton-waste-business in Heidelberg. This business is to be dissolved, under the cooperation of the firm Reis & Co. on July 1, 1913, in a manner that all goods unsold by July 1, will be taken over at the cost-price, also the current buying and selling contracts at the prices agreed upon and that the then existing obligations of Mr. Gustav Ely will be met.

3

The firm Reis & Co. enters this deal with July 1, under the condition that it will bring a modest profit into the treasury of the firm Reis & Co. and that the assets at hand will be sufficient to cover the liabilities. The obligations to be covered by Reis & Co. are to be taken in the sense that the incoming and outgoing payments have to go through the treasury of Reis & Co., said firm however does not assume any liability neither for the obligations of Mr. Gustav Ely to Mr. Iggersheimer nor to other persons or firms against Mr. Gustav Ely in connection with contracts or through other legal grounds.

4

The property of Mr. Ely in Wirblingen will be taken over by [fol. 182] Reis & Co. by adding its book-value, that is 38,500 M. to the credit of Mr. Ely; however, Mr. Ely assumes the liability for any loss at an eventual sale of the property; on the other hand any profit that may result through the sale is due Mr. Ely. Aside of this the firm Reis & Co. will be entitled to sell the property of Mr. Ely as soon as at least three fourths (¾) of the above mentioned book-value can be atttained. The surplus resulting from the liquidation of Mr. Ely's business has to remain with Reis & Co.

5

Mr. Ely will receive a yearly salary of 12,000-M. and a yearly royalty of 15 percent of the net profit of the firm Reis & Co. The balance to be drawn according to commercial principals recognized by the partners of Reis & Co., serves as a basis for the calculation of the royalty.

6

The deductions to be made toward the establishment of the net profit are fixed in a manner that 5 percent is to be deducted from the fractional value of the property and buildings and 10 percent from the machines.

If the net profit of a year exceeds the amount of 500,000.-M. the firm Reis & Co. is entitled, on the ground of an understanding with Mr. Ely, to deduct bigger sums and also to accumulate reserves.

In calculating the royalty amount the eventual loss of one year may be carried over upon the next year unless it is not covered by accumulated reserves.

7

The royalties of the rest of the employees as well as the total salary of the partners of the firm per 80,000 M. come under the item of Commercial expenses.

8

This agreement is being concluded for a term of six years. If no notice is served by latest one year before the expiration of this agreement it is considered as prolonged for other four years. Aside of this the firm Reis & Co. is entitled to give a six months' notice [fol. 183] even before the expiration of the agreed time limit in case the firm Reis & Co. should be liquidated.

9

Mr. Ely is pledged to leave three fourths of the royalties due him with the firm Reis & Co. These amounts as well as his other accounts are to yield 4½ percent.

10

From eventual affiliated Companies or from other participations of the firm Reis & Co. in undertakings belonging to the Waste-(cotton-waste)-industry Mr. Ely will also receive the above determined royalty of 5 percent of the net profit.

11

For eventual litigations (quarrels) in connection with this contract it is agreed that the courts in Mannheim are to be considered as competent.

Heidelberg, May 22, 1913.

Reis & Company, Gustav Ely. Peter Weber, Translator.

JSD.

Defendants' Exhibit VII

Translated from the German

Agreement Between the Firm of Reis & Co., Friedrichsfeld, and Mr. Alex Leiser, Zittaw

1

Mr. Alex Leiser starts with a position as traveling salesman December 1, 1910 for the firm Reis & Co. and his place of residence will be Heidelberg.

2

This contract is concluded for four years, i. e. from December 1, 1910 until November 30, 1914.

3

Mr. Leiser will have to make selling and buying trips according to the instructions of the two partners of the firm Reis & Co. whereby each partner of the firm has the right to issue binding [fol. 184] orders. Mr. Leiser is obliged to be on the road all year through if it considered necessary.

However, the firm Reis & Co. is not obliged to occupy Mr. Leiser all year through as a travelling salesman; it is entirely up to the firm to determine how often, how long and in what districts Mr. Leiser is to work as travelling salesman.

Furthermore Mr. Leiser is obliged, in case he is not working on the road, to represent other employees or to perform other commercial services which can be demanded from an employees or to perform other commercial services which can be demanded from an employee holding the position of Mr. Leiser.

4

The yearly salary of Mr. Leiser amounts to 8,000-M. payable in monthly rates, at the end of each month. Aside of this Mr. Leiser is entitled to a 2 percent royalty of the yearly net profit of the firm Reis & Co. The net profit is to be calculated and determined exclusively by the partners of the firm Reis & Co. Bonuses and royalties of the employees come under the item of Commercial expenses.

When on the road Mr. Leiser will receive a lump sum to pay expenses and transportation. On the other hand Mr. Leiser is obliged to submit a specified list of expenses in case the firm Reis & Co. should demand it.

5

Mr. Leiser binds himself that for two years after the cancellation of this contract he will not accept a position in the same or similar business, especially not with the firms:

W. Wolf & Sons, Unterturkheim,
Salomon Bros. Hanover,
Felix Falk, Mannheim,
L. H. Reis, Mannheim,
Isaac Weiss & Co. Muehlhausen,
Degenkolbe & Otto, Crimmitschau,
Arthur Kirstein Hamburg,
[fol. 185] Wilhelm Tichauer, Zittaw,

or their eventual legal successors, nor to erect a similar business for himself or to participate directly in such business.

In case of non-observance of this agreement Mr. Leiser has to pay the amount of 10,000-M. to Reis & Co.

The payment of this fine does not exclude other claims or the reparation of a further loss.

As the same or similar business, according to this contract, are considered Cotton-(Waste) factories, Capok-factories and firms dealing in Waste—(refuse) cotton and "Linters."

6

For eventual quarrels or litigations the regular courts in Heidelberg are competent.

7

Half of the royalty of Mr. Leiser remains in the treasury of Reis & Co. These amounts will yield 4½ per cent interests. The capital of the partners with the firm yield the same amount of interest.

8

Mr. Leiser receives 500.-M. for his transportation expenses from Zittaw to Heidelderg.

9

The firm Reis & Co. takes over the automobile of Mr. Leiser at the price of 6,500.M. payable December 1, 1910.

10

This agreement is signed by both parties and each party keeps one copy.

In case of cancellation of this contract the deposited royalties re-

main for two more years, counted from the day of leaving, in the treasury of the firm Reis & Co.

Zittaw, Oct. 13, 1910.

Alex. Leiser, Reis & Co.

[fol. 186] Supplement to the Agreement Dated October 13, 1910, Between the Firm Reis & Co., Friedrichsfeld, and Mr. Alex. Leiser, Heidelberg

1

The existing agreement is herewith prolonged till November 30, 1918 under the same conditions agreed upon by both parties in October 1910, however with the following modifications:

2

Starting with December 1, 1913 the salary of Mr. Leiser will amount to 12,000 M.

The royalty will be fixed at 5 per cent starting the same date.

Mr. Leiser agrees that the total salary of the partners amounting to 80,000-M. is to be counted as an expense item as it was the case up to now. Mr. Leiser is entitled to look over the balance sheets.

3

Mr. Leiser will receive the collective procuration on July 1, 1913.

4

It is furthermore agreed that an amount of 3,000.-M is being added to the credit of Mr. Leiser for his satisfactory efforts in the real estate deal Scheibe and that his debit account of 3,000.-M for expenses will be covered.

5

In case of an eventual liquidation of the firm Reis & Co. a three months' notice is binding for both parties.

Friedrichsfeld, May 29, 1913.

Reis & Co., Alex. Leiser. Peter Weber, Translator.

JSD.

[fol. 187] DEFENDANTS' EXHIBIT VIII

Translated from the German

Copy

Agreement Between the Firm Reis & Co., Friedrichsfeld, and Mr. Adolf Senft, Heidelberg

Beginning with December 1, 1912 Mr. Adolf Senft will receive, aside of a monthly salary of Mark 400.-, a royalty of ½ per cent (in words: one half per cent) of the net profit of the firm Reis & Co. and the enterprises connected with it.

The balance to be established by the partners of the firm is to serve as basis for the calculation of the royalty.

For his credit with the firm Mr. Senft will be paid 5 per cent interest.

It is agreed by both parties that notice of one year, at the conclusion of a business year, is to be given toward the abrogation of this agreement.

Friedrichsfeld, May 12, 1913.

Reis & Co., Adolf Senft. Peter Weber, Translator.

JSD.

DEFENDANTS' EXHIBIT IX

Translated from the German

Agreement Between the Firm Reis & Co., in Friedrichsfield, and Mr. Friedrich Heinstein, Friedrichsfeld

1. Mr. Friedrich Heinstein is employed with the firm Reis & Co. as commercial representative, according to paragraph 54 of the book for Commercial laws, and it is his duty to perform the work assigned to him with the greatest care and conscientiousness.

2. The task of Mr. Heinstein consists in the independent management of the Sales-Department incl. the management of the sample room, the control of the incoming goods, furthermore the control of the execution of orders (buying and selling), in taking charge [fol. 188] of the main treasury and in taking care of the bills.

In absence of the partners of the firm Reis & Co., Mr. Heinstein has to perform the routine business independently by consulting the office-manager.

Mr. Heinstein will also have to represent other employees in case of necessity and to perform other commercial services that can be asked from an employee holding a position of Mr. Heinstein.

3. The yearly salary of Mr. Heinstein amounts to 4,200 M. payable in monthly rates of 350 M. at the end of each month.

Mr. Heinstein is also entitled to a 1 per cent royalty from the

yearly net profit. The net profit is being established exclusively by the partners of the firm Reis & Co.

Mr. Heinstein has the right to peruse the original balance sheet.

All royalties and bonuses paid to employees are deductible in establishing the net profit from which Mr. Heinstein is to draw a 1 per cent royalty.

An average minimum royalty of 800 M. a year is herewith guaranteed to Mr. Heintsein.

The amounts of Mr. Heinstein's royalties remain in the treasury of the firm Reis & Co. until a total of 10,000 M. is reached.

4½ per cent interests will be paid yearly for such amounts.

In case of cancelation of this contract the deposited royalty-amounts remain for three more years in the treasury of the firm Reis & Co. counted from the day of leaving.

Should Mr. Heinstein however wish to use the deposited royalty-amounts for the purchase of a dwelling-house the firm Reis & Co. will advance the amounts in question to Mr. Heinstein as a loan against a mortgage guaranty on the dwelling house that is to be bought. After expiration of the appointed time of 3 years the mortgage held by the firm Reis & Co. has to be cancelled.

4. Mr. Heinstein binds himself to observe strictest silence about all business procedures, methods and salary conditions even after this contract will be cancelled.

[fol. 189] 5. This contract begins with Dec. 1, 1909 and is concluded for an indefinite time.

A two months' notice for both parties is stipulated to be given on the first day of a calendar-quarter (Jan. 1, Apr. 1, July 1, or October 1).

6. Mr. Heinstein pledges himself neither to accept within three years after the cancelation of this contract a position with a similar firm, especially not with the firms

W. Wolf & Sons, Unterturkheim,
Solomon Bros., Hanover,
Felix Falk, Mannheim,
L. H. Rein, Mannheim,
J. Weiss & Co., Mulhausen, i. e.,
Degenkolbe & Otto, Crimitschau,
Arthur Kirstein, Hamburg,

or their eventual legal successors, nor establish such business for himself or participate directly or indirectly in a similar business.

In case of non-observance of these stipulations Mr. Heinstein has to pay to the firm Reis & Co. a contract-fine of 10,000 (Ten thousand) Mark.

The payment of this fine does not exclude other claims or the reparation of eventual further damages.

As the same or similar business, in the sense of this contract,

are to be taken Woolen—and Capok—factories as well as firms dealing with cotton-waste material.

7. At the cancellation of this contract Mr. Heinstein has to turn over to the firm Reis & Co. all business papers, notes and so forth, he may have in his possession.

8. For eventual quarrels or law suits the regular courts in Heidelberg are competent.

9. This contract is drafted in two copies, each party signs it and each party retains one original copy.

Friedrichsfeld, Sept. 14, 1910.
(Signed) Reis & Co., Friedr. Heinstein. Peter Weber, Translator.

[fol. 190] DEFENDANTS' EXHIBIT XII

Actual Value of Richard Mayer's Share in European Assets of Reis & Co. per April 6th, 1917

Book Value as per Exhibit C—Page 4			M 1,836,353.80
Gain through difference between Book Value of Dec. 31, 1916, and Real Value per Apr. 6, 1917:			
Unliquidated Assets:			
Book Value Dec. 31/16:			
a—Land & Buildings		M 252,037.66	
b—Machinery		35,455.00	
		287,492.66	
Actual Value Apr. 6/17:			
a—Land & Buildings	506,408		
b—Machinery	128,620		
		635,028.00	
Difference		M 347,535.34	
20% of which is			69,507.07
Total			M 1,905,860.87

DEFENDANTS' EXHIBIT XIII

Actual Value of Richard Mayer's Share in European Assets of Reis & Co. per March 26, 1923

Actual Value April 6/17	M 1,905,860.87
Gain through sale of Algersdorf & Franzenthal plants as per Exhibit C—page 16	227,734.95
Difference in actual value between April 6, 1917, and March 26/23 in Unliquidated Assets:	

Value April 6/17:				
a—Land & Buildings			M 506,408	
b—Machinery			128,620	
			M 635,028	
[fol. 191] Value March 26/23:				
a—Land & Buildings	M	36,600,000		
b—Machinery		44,400,000		
			M 81,000,000	
Difference			M 80,364,972	
20% of which is				16,072,995.40
Total				M 18,206,591.22

In United States District Court

Joint Præcipe for Transcript of Record—Filed January 23, 1924

The plaintiff-appellant and the defendants-appellants in the above entitled cause join in the request that the following portions of the record be incorporated into the transcript on appeal to the Circuit Court of Appeals of the United States for the First Circuit, namely:

1. The bill of complaint.
2. The answer of Richard Mayer.
3. The answers of Edwin Reis, Karl B. Strauss and Anny Reis in her own right and as trustee of her minor children.
4. The condensed statement of the evidence.
5. The opinion of the court.
6. The final decree.
7. The respective petitions for appeal.
8. The respective assignments of error.
9. The bonds of defendants-appellants to parties on appeal.
10. The respective citations on appeal.
11. This præcipe.

Elias Field, Special Assistant to the Attorney General, Attorney for Plaintiff-Appellant. Edward F. McClennen, Attorney for Richard Mayer, Defendant-Appellant. Clifford P. Warren, Attorney for Edwin Reis, Karl B. Strauss, and Anny Reis, Defendants-Appellants.

[fol. 192] Citation—In usual form showing service on Edward F. McClennen and Clifford P. Warren; omitted in printing

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[fol. 193] Citation—In usual form showing service on Elias Field and Clifford P. Warren; omitted in printing

[fol. 194] CITATION—In usual form, showing service on Dunbar, Nutter and McClennen,, and Elias Field; omitted in printing

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[fol. 195] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing is a transcript of the record on appeal including true copies of such proofs, entries and papers on file as have been designated by præcipe as being the portions of the record of said District Court to be included in the record on the appeals of Thomas W. Miller, plaintiff, Richard Mayer, defendant, and Edwin Reis, Karl B. Strauss and Anny Reis, defendants, in the cause in equity entitled—in said District Court determined, together with the original citations and acknowledgments of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this 24th day of March, A. D. 1924.

James S. Allen, Clerk. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME—February 23, 1924

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the United States Circuit Court of Appeals for the First Circuit be enlarged to and including Monday, March 24, 1924.

Elisha H. Brewster, U. S. District Judge.

[fol. 196] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1923

No. 1730

THOMAS W. MILLER, Alien Property Custodian, Plaintiff, Appellant,

v.

RICHARD MAYER et al., Defendants, Appellees

No. 1731

RICHARD MAYER, Defendant, Appellant,

v.

THOMAS W. MILLER, Alien Property Custodian, Plaintiff, Appellee

No. 1732

EDWIN REIS et al., Defendants, Appellants,

v.

THOMAS W. MILLER, Alien Property Custodian, et al., Appellees

Appeals from the District Court of the United States for the District of Massachusetts

Before Bingham, Anderson, and Hale, JJ.

OPINION—September 18, 1924

HALE, J.:

In the year 1913 Richard Mayer, a naturalized citizen of the United States and a resident of Boston, formed a partnership under the name of Reis & Company, with Edwin Reis and Ludwig Reis, [fol. 197] residents of Germany, and Karl B. Strauss, a naturalized citizen of Great Britain. The firm had a "regular firm office" in Boston, and established houses in Germany, England and the United States. In 1914 and 1915 Mayer organized two Massachusetts corporations, the Richard Mayer Company and the Anglo-American Cotton Company, and capitalized them with assets of Reis & Company in his hands. By June, 1915, the shares in the Richard Mayer Company were all in Mayer's name except for a few nominal shareholders. The shares in the Anglo-American Cotton Company were in the name of the manager, one Laible, but were indorsed in blank and were in Mayer's possession. By the outbreak of the war between Germany and the United States, April 6, 1917, the partnership was dissolved. The German partners thereafter continued the German business as a going business, and have so continued it on their own account, treating the German assets as their own. It ap-

pears that Mayer, after the outbreak of the war, converted into cash all the American assets except the stock in the Richard Mayer Company and the stock in the Anglo-American Cotton Company, and had the cash invested in his own name. In May, 1918, the Alien Property Custodian seized all the stock of the Richard Mayer Company and of the Anglo-American Cotton Company as the property of Reis & Company. In September, 1918, he seized the securities and cash. In November, 1918, Mayer filed a claim with the Alien Property Custodian for the return of the property, alleging a dissolution of the partnership on the declaration of war, that he had taken all the property over as his own, and that he believed the German partners had no claim on him. In March, 1919, he filed another claim, restating his right to a return of the property. On April 7, 1919, he brought a bill in equity against the Custodian for the return of the property, basing his claim on the alleged dissolution agreement of February 7, 1917, and also on his right to the possession of the American assets to secure his lien and to account for the balance.

This suit, Mayer v. Garvan, Alien Property Custodian, et al., came before the District Court, and by appeal was brought to this court. [fol. 198] This court held (278 Fed. Rep. 27) that the partnership was dissolved upon the outbreak of war, April 6, 1917; that the alleged dissolution agreement of February 7, 1917, was invalid; that, after the declaration of war, all commercial intercourse between the American and German partners was unlawful and opposed to the public policy of the United States. That under the partnership articles, the complainant is entitled upon distribution to have paid him out of the assets of the partnership the amount of his capital investment, within interest, and also 20 per cent of the net profits which had been earned by the partnership, and he is liable for 20 per cent of all losses;

"that, upon the present state of the evidence this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property, and there being no evidence of the liabilities of the firm."

"That the complainant on the dissolution of the partnership with the outbreak of war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting."

"That the plaintiff is entitled to the immediate repossession of all property so seized and the net proceeds arising therefrom; that the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of section 8 (a) of the Trading with the Enemy Act, and of the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

In June, 1922, such property as remained in the hands of the Alien Property Custodian was returned to Mayer, who immediately

accounted to the Alien Property Custodian, alleging that there was no surplus to be paid over to him. This account was not approved by the Custodian. The Alien Property Custodian then brought suit against Mayer and the German partners to determine their respective shares in the firm assets, joining all parties necessary to a set-
[fol. 199] tlement of the controversy. After a careful hearing, Judge Johnson in the District Court finds the value of Mayer's share of the net assets in Germany on April 6, 1917, to be M. 2,414,-056.12, and that from this sum there should be deducted the sum of M. 266,432.40, the amount paid by the German partners after April 6, 1917, for taxes assessed on Mayer's partnership interest during the years 1914, 1915 and 1916; also that there should be deducted the sum of M. 50,400, paid by the German partners to Mayer's relatives in Germany, all of which, except M. 600 was paid after April 6, 1917. Deducting these amounts, there remains as Mayer's share of the European assets on April 6, 1917, M. 2,097,-223.72; and the District Court holds that the German partners should account to him for that sum as of April 6, 1917. For the purposes of this accounting the District Court finds that the sum of $828,-072.72 represents the value of the American assets for which Mayer should account; and that his share of these assets is 20 per cent or $165,614.54, and that to this sum should be added his interest in the European assets which has been stated in marks.

With reference to the value of the mark, the District Court finds:

"Upon March 30, 1917, the nearest date to April 6, 1917, when the rate of exchange was quoted, the value of the German mark in the currency of the United States was about 18 cents. After the declaration of war there was of course no rate of exchange between the United States and Germany and none was quoted until some time in 1919, when the first quotation of the value of the German mark in the currency of the United States was 7⅞ cents. Upon July 2, 1921, when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents; and at the time of the beginning of the hearing before me, March 28, 1923, its value was .0048 of a cent, and it is well known that since that time the rate of exchange has further declined. There is no evidence to show the domestic value of the German mark nor whether the decline in the rate of exchange, as shown in this country, correctly expresses the decline in its value in Germany."

[fol. 200] The District Court finds also:

"The decree in this case must be in terms of American dollars. The American assets are measured in terms of the American gold dollar containing gold of a standard weight and fineness. The German assets should be measured by the same yard-stick; that is, by the gold mark which is equivalent to 23.82 cents of the money of the United States, both based upon a gold standard."

The assignments of error challenge substantially all the findings of the District Court. The learned counsel for the Alien Property Custodian and for the German partners urge, with earnestness and

with great learning, that the title to the partnership property was not affected by the outbreak of the war, or by any act of the partners; that Mayer is chargeable with his ratable share of the depreciation in the value of European assets since dissolution; that the accounting to determine the distributive shares of the parties must be stated upon the basis of the present value of the partnership assets; and that the value of the mark should be at the present rate of exchange.

This is not a suit to dissolve a partnership or to obtain an accounting for operations of the partnership after April 6, 1917. It has already been determined that the partnership was dissolved at the above date by the terms of the Trading with the Enemy Act; and by the decree of May 4, 1922, that Mayer is entitled to hold all the assets until his share in the firm assets has been determined.

The law is well settled that in the case of the death of a partner it is the duty of the surviving partners to liquidate within a reasonable time. If they do not so liquidate, but continue the business of their own motion, they become liable for the value of the deceased's share at the time of dissolution. Clay v. Field, 138 U. S. 464, 473; Moore v. Rawson, 185 Mass. 264; Hutchins v. Page, 204 Mass. 284, 290.

We have no doubt that the accounting in this case must be as of the date of dissolution and termination of the partnership, April 6, 1917, on and after which time the German partners conducted the [fol. 201] business in Germany on their own account, treating the assets there located as their own.

The most important question is whether the District Court was right in holding that the German assets should be measured by the gold standard by which the American assets are measured, namely, that they should be measured by the gold mark, equivalent to 23.82 cents of the money of the United States.

In Adams v. Cordis, 8 Pick. 260, 266, the Massachusetts court had before it a case in which a foreign creditor sued for his debt in Massachusetts; and it was held (Chief Justice Parker speaking for the court) that "all the plaintiffs can ask is their debt justly liquidated and paid in the lawful currency of the United States," and "that the debt is to be paid according to the par, and not the rate of exchange."

In Grant v. Healey, Fed. Cases 5696 (3rd Sumner, 523), Judge Story carefully considered Adams v. Cordis, and disagreed with some of the reasoning of Chief Justice Parker; but he held that the suit before him was brought for a balance of account, for advances made at Boston for goods consigned to the plaintiff at Trieste and sold by them at a loss; and that inasmuch as the balance was not payable at Trieste but was payable at Boston, therefore the balance was to be estimated in damages at par and not at the rate of exchange. In Reiser v. Parker, Fed. Cases No. 11,685, 1st Lowell, 262, Judge John Lowell had before him an action to recover a certain number of pounds sterling, payable in London. Judge Lowell discussed fully the cases upon the subject and held that "the only safe rule is to compare the pound and the dollar upon a gold basis." He said: "the pound sterling has always been treated as money here though

foreign money, as a standard of value and not as a commodity. * * * Its value has a known and precise relation to that of our coin, so much so as to have become a question for the court rather than the jury. But it has none to our paper, because the latter is constantly fluctuating. We think it would be unsafe and on the whole likely to work injustice if this value were to be considered an open question in each case."

[fol. 202] In Birge-Forbes Company v. Heye, 251 U. S. 317, 325, and 248 Fed. 636, 640, the Circuit Court of Appeals for the Fifth Circuit and the Supreme Court had before them a case where a German had disbursed marks for his American principal; he sued in the District Court of the United States. It was held that the plaintiff company could recover in dollars at the normal value of the mark; that the German mark should be taken at par, in the absence of evidence that it had depreciated at the time of the plaintiff's payments. The decision was put upon the ground that the purpose of the judgment is to make the plaintiff whole for the amount which he paid out in discharging the obligations of his principal. In Page v. Levefson, 281 Fed. Rep. 555, 557, Judge Rose, in the District Court, comments upon the above case and cites a long list of cases showing the wide divergence of opinion both in the English and in the American courts upon this subject.

In the case at bar the issue before us relates to the amount of surplus, if any, for which Mayer, on April 6, 1917, was accountable in America, in American dollars, to be paid to the Alien Property Custodian of the United States. We think the amount of credit which Mayer may deduct because of his interest in the German assets on April 6, 1917, when they were taken over by the German partners as their own, is to be determined by the value of those assets at that time measured in the same medium of dollars, or by the number of grains of gold, in the two standards, to make them one; and not by the fluctuations in the rate of exchange. The intrinsic value of the mark was the amount of gold contained in .2382 of an American dollar.

The learned counsel for the plaintiff and for the German defendants have brought before us no decisions which support the proposition that the amount of credit described in dollars to which Mayer was entitled on April 6, 1917, on account of the German assets, should be affected by the rate of commercial exchange at any date after April 6, 1917.

The courts have not been in full agreement upon this question; but we think that, upon the evidence brought before us in this suit, [fol. 203] the reasoning and the better authority are in favor of the decision which the District Court has reached.

After the decree of this court in Mayer v. Garvan, in order to obtain a performance of the decree by the Alien Property Custodian, Mayer was obliged to pay out $4,000 as premium on a surety bond conditioned on his performance of any decree to be entered in the case. Mayer insists that this premium should be allowed him as a necessary expense of liquidation and charged against the surplus due the German partners, or, at any rate, against the American

assets, so that the parties would bear the expense ratably between them. As the bond was furnished to enable Mayer to obtain possession of the American assets for the purpose of liquidating and accounting for the same, and was an expense incurred for the benefit of all interested in the liquidation and settlement of the partnership, we think the premium should be allowed as a charge against the firm assets in his hands.

It appears that during the years 1914, 1915 and 1916, the German Government assessed against Mayer's partnership interest certain taxes, in all amounting to 266,432.40 marks. These taxes were paid by the German partner December 10, 1917, some eight months after the outbreak of the war and the appropriation of Mayer's interest by the German partners. The District Court held that this sum might be deducted from the share of Mayer in the European assets. We, however, are of the opinion that this deduction should not have been made. Having appropriated Mayer's interest in those assets to themselves they cannot now claim that they paid the taxes for the purpose of protecting his interest and for his benefit. Whatever authority they may have had prior to the outbreak of the war had been terminated at the time the payments were made. It is plain that they did not act as trustees and for the protection of his interest, for that interest they had appropriated to themselves.

In the District Court the sum of 50,400 marks was also allowed to be deducted from Mayer's share in the European assets. It appears that all of this sum, except 600 marks, was paid by the German partners to Mayer's relatives after the declaration of war on [fol. 204] instructions received from Mayer prior to the outbreak of the war. Counsel for the Alien Property Custodian contends that the German partners were entitled to have these payments considered, even though the authority therefor was terminated by the outbreak of war, on the ground that they were made by them as trustees holding Mayer's interest. We, however, do not think that these payments, except the 600 marks paid before the outbreak of war, should have been allowed. Whatever authority the German partners had received from Mayer prior to the war to make these payments was ended by the war and, as we have pointed out above, on the outbreak of the war, the German partners appropriated Mayer's interest to themselves, so that they held no interest of his to protect.

We also think that Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the suit of Mayer v. Garvan should be charged against the assets in Mayer's hands as liquidation expenses. In that suit he did not rest his claim to the possession of and the right to liquidate the American assets simply upon the dissolution agreement of February 7, 1917, but also upon his right to the possession of the property to secure his lien thereon and to account. On the latter issue he prevailed and the reasonable expenses incurred were necessary liquidation expenses and should also be charged against the assets in Mayer's hands.

The amount of such expenses will, of course, have to be determined on further hearing in the District Court.

Judge Johnson has found that the German partners could not determine the distributive share of Mayer in the firm assets; and, if they had been able to do so, they could not pay any part of his share to him while a state of war continued between Germany and the United States. "They are not, therefore, liable for payment of interest upon his distributive share." Mayer urges that he was wrongfully deprived of his property and should be left as well off as if the wrong had not been done him; that the Alien Property Custodian seized the property wrongfully, as that of the enemy partners; that he, an American citizen, ought to come out whole, [fol. 205] as he had done nothing wrong; and that, thus, he should have his interest, or money in lieu of interest, on his distributive share. A majority of the court think the District Court was right in disallowing this claim for interest or compensation for the loss of use of his property.

The sum or sums set aside by the German partners as reserves to meet losses, and paid out by them after the outbreak of war, and during the years 1918, 1919 and 1920, when they were conducting the business on their own account, were properly disallowed as a liability.

We think the District Court acted with a proper sense of the equitable rights of the parties in making its decree with reference to the claim of Laible for interest, and its order of the deposit of $7,000 with Mr. McClennen, as an officer of the court, under the terms imposed by the court. We think the District Court acted under the principles of equity in passing upon the question of the claim of the United States for the amount paid on account of the loss of cargo on the Carolyn. We do not see how any further order can now be made in this matter.

The decree of the District Court, as to the premium of $4,000, counsel fees and disbursements, taxes and payments to relatives is modified as above pointed out, and so modified it is affirmed with costs in this court to Mayer, to be satisfied in Nos. 1730 and 1731 from any surplus payable to the Custodian and in No. 1732 by Reis et al.

[fol. 206] In United States Circuit Court of Appeals

[Titles omitted]

Final Decree—September 18, 1924

This cause came on to be heard April 23, 24 and 25, 1924, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, September 18, 1924, here ordered, adjudged and decreed as follows: The decree of the District Court, as to the premium of $4,000, counsel fees and disbursements, taxes and payments to relatives is modified in ac-

cordance with the opinion passed down this day, and as so modified it is affirmed with costs in this court to Mayer, to be satisfied from any surplus payable to the Custodian.

By the Court.

Arthur I. Charron, Clerk.

In United States Circuit Court of Appeals

Final Decree—September 18, 1924

This cause came on to be heard April 23, 24 and 25, 1924, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, September 18, 1924, here ordered, adjudged and decreed as follows: The decree of the District Court, as to the premium of $4,000, counsel fees and dis-[fol. 207] bursements, taxes and payments to relatives is modified in accordance with the opinion passed down this day, and as so modified it is affirmed with costs in this court to Mayer.

By the Court.

Arthur I. Charron, Clerk.

[fol. 208] In United States Circuit Court of Appeals

Petition of Thomas W. Miller for Appeal and Order Allowing Same—Filed December 10, 1924

Thomas W. Miller, Alien Property Custodian of the United States being aggrieved by the final decrees entered in the above-entitled cases on or about September 18, 1924, affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered October 2, 1923, does hereby appeal to the Supreme Court of the United States from said decrees.

The particulars in which your petitioner considers the said decrees erroneous are set forth in the asignment of erro-s herewith filed to which reference is hereby made.

Your petitioner further prays that a transcript of the record and proceedings and the appeal papers upon which said appeal was made, duly authenticated, may be transmitted to said Supreme Court.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

This appeal may be allowed December 10, 1924.

George H. Bingham, Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignments of Error of Thomas W. Miller—Filed December 10, 1924

Thomas W. Miller, as Alien Property Custodian, in connection with his petition for appeal from the final decrees entered on or about September 18, 1924, in the above entitled cases, affirming with modifications the decrees of the District Court of the United States for the District of Massachusetts entered on or about the 2nd day of October, 1923, presents the following assignment of errors upon which he will rely in said appeal:—

1. In holding and ruling that Richard Mayer's distributive share in the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European [fol. 209] assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

3. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the enemy share of the American assets of the partnership of Reis & Company.

4. In holding and ruling that the German partners after April 6, 1917 continued the German business of the partnership on their own account treating the German assets as their own.

5. In failing to hold and rule that Richard Mayer continued the American business of the partnership after April 6, 1917 as a going business on his own account without authority therefor from his partners.

6. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership was measured was the amount of gold contained in .2382 of an American dollar.

7. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands, the sum of $4,000 paid out by him as a premium on a surety bond.

8. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915, and 1916.

9. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

10. In holding and ruling that on the outbreak of the war the German partners appropriated Richard Mayer's interest to themselves, so that they held no interest of his to protect.

11. In holding that Richard Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the former suit of Mayer vs. Garvan should be charged against the Alien Property Custodian's share of the assets in Mayer's hands on accounting.

12. In holding and ruling that the liability for reserves as shown on the balance sheet of the partnership on December 31, 1916, should not be allowed as a liability of the firm in a partnership accounting.

13. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of German currency.

[fol. 210] 14. In failing to hold and rule that no fault or neglect on the part of individual partners caused the depreciation in the value of the European assets of the partnership since the declaration of war.

15. In holding and ruling that none of the depreciation in the value of the European assets of the partnership after dissolution is chargeable to Richard Mayer.

16. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

17. In holding and ruling that the enemy share of American assets payable to the Alien Property Custodian on account is to be diminished because of the failure of the German partners to liquidate the European assets after the outbreak of war.

18. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

19. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an accounting of all the affairs of the partnership could be had.

20. In failing to hold and rule that the equitable title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

[fol. 211] In United States Circuit Court of Appeals

Petition of Edwin Reis, Karl B. Strauss, and Anny Reis, Defendants, for Appeal and Order Allowing Same—Filed December 10, 1924

The defendants, Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, being aggrieved by the final decrees entered in the above entitled causes on or about September 18th, 1924 affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered October 2nd, 1923, do hereby appeal to the Supreme Court of the United States from said decrees.

The particulars in which your petitioners consider the said decrees erroneous are set forth in the assignment of errors herewith filed to which reference is hereby made.

Your petitioners further pray that a transcript of the record and proceedings and the appeal papers upon which said appeal was made, duly authenticated, may be transmitted to said Supreme Court.

Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, Edwin Reis, Karl B. Strauss, by Their Attorney, Morris Buchter.

[fol. 212] This appeal is allowed Dec. 10th, 1924.

George H. Bingham, Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignments of Error of Edwin Reis et al—Filed December 10, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, in connection with their petition for appeal from the final decrees entered on or about September 18th, 1924 in the above entitled cases affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered on or about the 2nd day of October, 1923, jointly and severally present the following assignments of error upon which they will rely in said appeal.

The court erred:

1. In holding and ruling that Richard Mayor's distributive share of the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the term "marks" as used by the German partners in the accounting of the partnership assets in Germany and as used by the witness Edwin Reis, in his testimony at the trial referred to the then current paper marks as distinguished from gold marks.

3. In holding and ruling that the marks in question in *this* case had any intrinsic value in gold at any time after the passage of the German legal tender acts.

4. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership were measured was the amount of gold contained in .2382 of an American dollar.

5. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

6. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

7. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an accounting of all the affairs of the partnership could be had.

8. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

[fol. 213] 9. In holding and ruling that Richard Mayer should not share the losses occasioned by the depreciation in the value of the European assets of the partnership after dissolution.

10. In failing to hold and rule that the title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

11. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of German currency.

12. In failing to hold and rule that no fault or neglect on the part of the individual partners caused the depreciation in the value of the European assets of the partnership since April 6th, 1917.

13. In holding and ruling that the German partners became liable for the value of Richard Mayer's share of the German assets at the time of dissolution on account of failure to liquidate.

14. In failing to hold and rule that no loss whatsoever was sustained in this case by failure to liquidate.

15. In holding and ruling that the German partners after April 6th, 1917 continued the German business of the partnership on their own account, treating the German assets as their own.

16. In failing to hold and rule that Richard Mayer continued the American business of the partnership after April 6th, 1917 as a going business.

17. In holding and ruling that Richard Mayer's distributive share in the European assets of Reis & Company is 2,364,056.12 marks, arrived at as follows: 2,097,223.72 marks found by the District Court as Richard Mayer's share; 226,432.40 marks paid by the German partners to the German Government as taxes levied against Mayer's share of the German assets, and disallowed as a credit in the account of the German partners by the Circuit Court of Appeals; 50,400 marks paid by the German partners to Mayer's relatives at his request, and also disallowed as a credit in the account of the German partners by the Circuit Court of Appeals.

18. In failing to hold and rule that Richard Mayer's distributive share in the European assets of Reis & Company as of April 6th, 1917, is 18,206,591.22 marks exclusive of profits since that date or interest or the sum of 27,000,000 marks inclusive of profits or 19,121,404.44 marks inclusive of interest.

19. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the German partners' share of the American assets of the firm of Reis & Co.

[fols. 214-216] 20. In holding and ruling that the sum of 956,-814.31 marks set aside by the German partners for reserves should not be included among the liabilities to the payment of which Richard Mayer's share should contribute.

21. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands the sum of $1,000.00 paid out by him as a premium on a surety bond.

22. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915 and 1916.

23. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

24. In holding and ruling that Richard Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the former suit of Mayer v. Garvan should be charged against the Alien Property Custodian's share of the assets in Mayer's hands.

25. In failing to hold and rule that the claims of the employees Eli, Leiser, Sanft and Heinstein for percentages of profits of the firm constitute liabilities of the co-partners, and in failing to make provision in the decree of the payment of these liabilities.

Edwin Reis, Karl B. Strauss, Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children, by Their Solicitor, Morris Buchter.

Bond on Appeal for $250.00 —Approved and filed Dec. 10, 1924; omitted in printing

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[fol. 217] In United States Circuit Court of Appeals

Petition of Richard Mayer for Appeal and Order Allowing Same—Filed December 13, 1924

Richard Mayer, the defendant, being aggrieved by a part of the final decrees entered in the above entitled cases pursuant to a decision of the said Court handed down on or about the eighteenth day of September 1924 does hereby appeal to the Supreme Court of the United States from said decrees in respect to said part as more fully appears in the Assignment of Errors which is filed herewith and prays that his claim of appeal may be allowed and that a transcript of the record, proceedings and papers on which the said decrees were based, duly authenticated, may be sent to said Supreme Court of the United States.

Richard Mayer, by His Attorney, Edward F. McClennen.

This appeal is allowed December 13, 1924.

George H. Bingham, Senior Presiding Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignment of Errors of Richard Mayer—Filed December 13, 1924

Richard Mayer, defendant-appellant, assigns as the errors in the proceedings and in the decrees entered pursuant to the decision of the Circuit Court of Appeals for the First Circuit handed down on or about the eighteenth day of September, 1924 in the above entitled causes on which errors he, the said appellant, will rely in the prosecution of his appeal from said decree, that:

Richard Mayer should have been allowed interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918 claiming it as the property of Mayer's German former partners and until its return in 1922.

Richard Mayer, by His Attorney, Edward F. McClennen.

[fol. 218] Bond on Appeal for $500.00—Approved and filed Dec. 13, 1924; omitted in printing

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[fol. 219] Citation—In usual form, showing service on Edward McClennen and Morris Buchter; omitted in printing

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[fol. 220] Citation—In usual form, showing service on Elias Field and Edward McClennen; omitted in printing

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[fol. 221] Citation—In usual form, showing service on Elias Field and Morris Buchter; omitted in printing

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[fol. 222] In United States Circuit Court of Appeals

Clerk's Certificate

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing is the transcript of record on appeal including copies of such papers on file as have been indicated by the parties in their præcipes in the causes in said Court numbered and entitled as follows: [Title omitted] in said Circuit Court of Appeals determined, together with the original Citations issued with acknowledgments of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit at Boston, in said First Circuit this seventeenth day of December, A. D. 1924.

Arthur I. Charron, Clerk. (Seal of United States Circuit Court of Appeals, First Circuit.)

Endorsed on cover: File Nos. 30,771, 30,772, 30,773. U. S. Circuit Court of Appeals, First Circuit. Term No. 232. Thomas W. Miller, as Alien Property Custodian, appellant, vs. Richard Mayer, Edwin Reis, Karl B. Strauss, et al., etc. Term No. 233. Richard Mayer, appellant, vs. Thomas W. Miller, Alien Property Custodian, Edwin Reis, Karl B. Strauss, et al., etc. Term No. 234. Edwin Reis, Karl B. Strauss, and Anny Reis, etc., appellants, vs. Richard Mayer and Thomas W. Miller, as Alien Property Custodian. Filed December 29th, 1924. File Nos. 30,771, 30,772, 30,773.